(18,878.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 247.

RICHARD C. CRAWFORD AND EDWARD A. VALENTINE, PLAINTIFFS IN ERROR,

vs.

JOHN E. BURKE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, ss:

To John E. Burke, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Illinois wherein Richard C. Crawford and Edward A. Valentine are plaintiffs in error and you are defendant in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done for the parties in that behalf.

Witness the Honorable Benjamin D. Magruder, chief justice of the supreme court of the State of Illinois, on March 2", 1903.

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of the State of Illinois.

b STATE OF ILLINOIS, } ss:
County of Cook, }

On this 9th day of March, in the year of our Lord one thousand nine hundred and three, personally appeared before me the subscriber, D. A. Fraley, and makes oath that he delivered a true copy of the within citation to John E. Burke on the 5th day of March, A. D. 1903.

D. A. FRALEY.

Sworn to and subscribed to the 9th day of March, A. D. 1903.

[Seal of George Q. Allen, Notary Public, Cook County, Ills.]

GEORGE Q. ALLEN,
Notary Public, # 550, *Monadnock Building, Chicago, Ills.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

I have served this writ within my district by reading the same to and within the presence and hearing of John E. Burke, on March 5th, 1903, and at the same time delivering to him personally a true copy thereof.

JOHN C. AMES,
U. S. Marshal,
By D. A. FRALEY, *Dep'ty.*

Service	2.00
8 miles	48
	$2.48

c In the Supreme Court of Illinois.

RICHARD C. CRAWFORD and Edward A. Valentine *vs.* JOHN E. BURKE.	2689.	Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the tenth day of March in the year of our Lord one thousand nine hundred and three, a copy of the foregoing citation, and return, was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court, this twelfth day of March, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Illinois before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Richard C. Crawford and Edward A. Valentine, appellants in said supreme court of Illinois, and John E. Burke, appellee in said court,—(the said appeal in the supreme court of Illinois being from the appellate court of the first district of Illinois,—in a cause in which in said appellate court Richard C. Crawford and Edward A. Valentine were appellants and John E. Burke was appellee, and said appeal in said appellate court of the first district of Illinois being from the circuit court of Cook county, Illinois, in a suit in which John E. Burke was plaintiff and Richard C. Crawford & Edward A. Valentine were defendants) wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Con-
e stitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said

Richard C. Crawford and Edward A. Valentine, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of March, in the year of our Lord one thousand nine hundred and three.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States for the Northern District of Illinois, Seventh Circuit.

Allowed to operate as a supersedeas.

BENJ. D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

f

In the Supreme Court of Illinois.

RICHARD C. CRAWFORD and EDWARD A. Valentine *vs.* JOHN E. BURKE.	2689. Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the fourth day of March in the year of our Lord one thousand nine hundred and three, a copy of the foregoing writ of error for the defendants in error, was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court, this twelfth day of March, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

g In the Supreme Court of Illinois.

RICHARD C. CRAWFORD and EDWARD A. Valentine vs. JOHN E. BURKE.	No. 2689. Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of the supreme court and keeper of the records and files thereof, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from one (1) to six hundred and thirty-five (635) inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, as the same remain of record and on file in my said office, and that the succeeding pages numbered from six hundred and thirty-six (636) to six hundred and forty-one (641) inclusive, are an original assignment of errors likewise filed in my said office and which form a part of the transcript of the record; also I certify that the pages from six hundred and twenty-four (624) to six hundred and thirty-two (632) inclusive, which are included in the petition for the writ of error made to the chief justice of the supreme court of Illinois as Exhibit 1 to said petition, are a copy of the opinion of the supreme court of Illinois filed in said cause of Richard C. Crawford, *et al.* vs. John E. Burke.

In testimony whereof, I hereby set my hand and cause the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this twelfth day of March in the year of our Lord one thousand nine hundred and three.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of October, in the year of our Lord one thousand nine hundred and two, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, James H. Cartwright, justice, John P. Hand, justice, Joseph N. Carter, justice, Carroll C. Boggs, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that heretofore to-wit on the eighteenth day of September, A. D. 1902, there was filed in the office of the clerk of said court, a certain transcript of the record and proceedings of the circuit court of Cook county and of the appellate court of Illinois, first district, which said transcripts are in the words and figures following, viz:

STATE OF ILLINOIS, } ss:
Cook County, }

Pleas before the Honorable E. F. Dunn, one of the judges of the circuit court of Cook county, at a term thereof begun and held in the court house, at Chicago, in said county and State, on the third Monday (being the 21st day) of January, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-fifth.

Present: Honorable E. F. Dunn, one of the judges of the circuit court of Cook county, State of Illinois. Chas. S. Deneen, State's attorney Ernest J. Magerstadt, sheriff

Attest: JOHN A. COOKE, *Clerk.*

Be it remembered that heretofore, to-wit:—on the 30th day of July, A. D. 1897, a certain people's writ of summons was issued out of the office of the clerk of said court and under the seal thereof directed to the sheriff of Cook county to execute which writ together with the return of the sheriff thereon endorsed are in words and figures following, to-wit:—

 Copy.

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Richard C. Crawford and Edward A. Valentine if they shall be found in your county, personally to be and to appear before the circuit court of Cook county, on the first day of the term thereof, to be holden at the court house, in the city of Chicago, in said Cook county, on the third Monday of September, 1897, to answer unto John E. Burke in a plea of trespass on the case to the damage of said plaintiff, as it is said, in the sum of thirty thousand dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John A. Cooke, clerk of our said court, and the seal thereof, at Chicago, aforesaid, this 30th day of July, A. D. 1897.

[SEAL.] JOHN A. COOKE, *Clerk.*

(Endorsed across back as follows:

Served this writ on the within named defendant Richard C. Crawford, by reading the same to him this 30th day of July 1897, also

served this writ on the within named defendant Edward A. Valentine, by reading the same to him this 5th day of August 1897. James Pease, sheriff, by H. G. Hall, deputy.

Filed Aug. 18 1897

JOHN A. COOKE, *Clerk.*

4 And thereupon on the same day, to-wit;—on the 30th day of July A. D. 1897 a certain præcipe was filed in the office of the clerk of said court, in words and figures following, to-wit:—

5 STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County, to the September Term, A. D. 1897.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Defendants. } Case.

Damages, $30,000.

The clerk of said court will issue a summons in the above entitled cause to said defendant in a plea of trespass on the case to the damage of said plaintiff in the sum of thirty thousand dollars, direct the same to the sheriff of Cook county to execute and make it returnable to the September term of said court A. D. 1897.

JOHN E. BURKE,
Plaintiff and Attorney pro Se.

Chicago, July 30th, 1897.

To John A. Cooke, Esq., clerk.

Filed July 30, 1897.

JOHN A. COOKE, *Clerk.*

6 And afterwards, to-wit, on the 10th day of September, A. D. 1897 a certain declaration was filed in the office of the clerk of said court, in words and figures following to wit.

7 Copy.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine. } Case. Gen. No. 173,384.

John E. Burke, plaintiff, complains of the said Richard C. Crawford, and Edward A. Valentine, defendants, of a plea of trespass on the case: for that whereas, heretofore, to wit, on and prior to the 29th day of June, 1894, at the city of Chicago, county of Cook and State of Illinois, one Charles P. McAvoy and one Edward A. Valentine, were stockbrokers and copartners doing business as stockbrokers, under the firm name of Valentine and McAvoy, and whereas, heretofore, to wit: on the 29th day of June, 1894, the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, were holding and carrying, for and on account of the said plaintiff, four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, subject to the orders of the said plaintiff, which said shares of stock the said Valentine and McAvoy, as the brokers and agents of the said plaintiff had, prior to said last mentioned date, purchased for and on account of the said plaintiff, and at his request; and whereas, heretofore, to wit: on the 30th day of

8 June 1894, at the city of Chicago, county aforesaid, the said Richard C. Crawford and Edward A. Valentine, defendants, were stockbrokers and were then and there copartners doing business as stockbrokers, and dealers in investment securities, under the firm name of Crawford and Valentine; and whereas, before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, the said plaintiff, at the special instance and request of the said defendants, had retained and employed the said defendants, as the brokers and agents of the said plaintiff, to buy, hold and carry stocks for and on account of the said plaintiff and subject to said plaintiff's orders, for reward to said defendants, in that behalf, and the said defendants then and there accepted and entered upon said retainer and employment, to wit, at the city and county aforesaid; and thereupon heretofore, to wit, on the 30th day of June, 1894, the said plaintiff, at the special instance and request of the said defendants, caused the said four hundred and fifty shares of the capital stock of the Metropolitan Traction Company of the said plaintiff, of great value, to wit, of the value of sixty-three thousand dollars ($63000.), and purchased as aforesaid by the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, to be turned over, transferred and delivered to and placed under

the control of the said defendants to be held by said defendants, as a pledge for the amount due from plaintiff on said stock, and
9 to be carried and kept on hand by the said defendants, as the brokers and agents of the said plaintiff, for and on account of the said plaintiff, and subject to the orders of the said plaintiff, for reward to the said defendants in that behalf, and the said defendants then and there accepted and received the said four hundred and fifty shares of stock for the purpose aforesaid; and thereupon, it became and was the duty of the said defendants, as such brokers and agents of said plaintiff, and as such pledgees, to hold, as a pledge, and carry and keep on hand, the said four hundred and fifty shares of stock for and on account of the said plaintiff and subject to the said plaintiff's orders. And the said plaintiff further saith that heretofore, to wit; on the 28th day of September 1894, the said defendants, as the brokers and agents of the said plaintiff, and at the said plaintiff's request, purchased for and on account of the said plaintiff other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property of the plaintiff, of great value, to wit, of the value of seven thousand dollars, to be held as a pledge by said defendants and to be carried and kept on hand by the said defendants, as the brokers and agents of the said plaintiff, and for and on account of said plaintiff, and subject to the orders of the said plaintiff, for commission and reward to the said defendants in that behalf; and the said defendants heretofore, to wit, on the day and year last aforesaid, had and re-
10 ceived the said fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold as a pledge, and to keep on hand and carry the said fifty shares of stock for and on account of the said plaintiff, and subject to the orders of the said plaintiff, the total amount of the capital stock of the Metropolitan Traction Company then and there held and carried as aforesaid, by the said defendants, as aforesaid, for and on account of the said plaintiff, being five hundred shares; yet, the said defendants, not regarding their duty in that behalf, but contriving and intending to injure and defraud the said plaintiff in this behalf, afterwards, to wit, on the 24th day of October, 1894, wrongfully, wilfully and fraudulently, and without the knowledge or consent of the said plaintiff, and without any notice to him whatever, sold, delivered and disposed of a portion of said five hundred shares of stock, to wit, one hundred shares of the capital stock of the Metropolitan Traction Company, property of the said plaintiff, of great value, to wit, of the value of fourteen thousand dollars, and on the day and year last aforesaid. willfully and fraudulently converted the said one hundred shares of stock and the proceeds of the sale thereof and plaintiff's reversionary interest in said stock to their own use, by means whereof the said one hundred shares of stock and the proceeds of the sale thereof, and

plaintiff's reversionary — in said stock, were wholly lost to
11 the said plaintiff.

2. And whereas, also, heretofore, to wit, on and prior to the 29th day of June, 1894, at the city of Chicago, county of Cook and State of Illinois, one Charles P. McAvoy and one Edward A. Valentine were stockbrokers and copartners doing business as stockbrokers, under the firm name of Valentine & McAvoy, and whereas heretofore, to wit, on the 29th day of June, 1894, the said Valentine & McAvoy, as the brokers and agents of the said plaintiff, were holding and carrying, for and on account of the said plaintiff, four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, subject to the orders of the said plaintiff, which said shares of stock the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, had, prior, to said last mentioned date, purchased for and on account of the said plaintiff, and at his request; and whereas, heretofore, to wit, on the 30th day of June, 1894, at the city of Chicago, county aforesaid, the said Richard C. Crawford and Edward A. Valentine, defendants, were stockbrokers and were then and there copartners doing business as stockbrokers, and dealers in investment securities, under the firm name of Crawford and Valentine; and whereas, before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, the said plaintiff, at the special instance and request of the said defendants, had retained and employed the said
12 defendants as the brokers and agents of the said plaintiff, to buy, hold and carry stocks for and on account of said plaintiff and subject to said plaintiff's orders, for reward to said defendants in that behalf, and the said defendants then and there accepted and entered upon such retainer and employment to wit, at the city and county aforesaid; and thereupon heretofore, to wit, on the 30th day of June, 1894, the said plaintiff at the special instance and request of the said defendants, caused the said four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, of the said plaintiff, of great value, to wit; of the value of sixty-three thousand dollars, and purchased as aforesaid by the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, to be turned over, transferred and delivered to and placed under the control of the said defendants to be held by the said defendants as a pledge for the amount due from plaintiff on said stock, and to be carried and kept on hand by the said defendants as the brokers and agents of the said plaintiff for and on account of the said plaintiff, and subject to the orders of the said plaintiff for reward to the said defendants in that behalf, and the said defendants then and there accepted and received the said four hundred and fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said defendants as such brokers and agents of said plaintiff, and as such pledgees, to hold, as a pledge, and carry and

keep on hand the said four hundred and fifty shares of stock
13 for and on account of the said plaintiff, and subject to the said plaintiff's orders. And the said plaintiff further saith that heretofore, to wit, on the 28th day of September 1894, the said defendants, as the brokers and agents of the said plaintiff, and at the said plaintiff's request, purchased for and on account of the said plaintiff, other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property of plaintiff, of great value, to wit, of the value of seven thousand dollars, to be held as a pledge by said defendants, and to be carried and kept on hand by the said defendants, as the brokers and agents of the said plaintiff, and for and on account of said plaintiff, and subject to the orders of the said plaintiff, for commission and reward to the said defendants in that behalf; and the said defendants heretofore, to wit, on the day and year last aforesaid, had and received the said fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold as a pledge and to keep on hand and carry the said fifty shares of stock for and on account of the said plaintiff, and subject to the orders of the said plaintiff; yet, the said defendants, not regarding their duty in that behalf, but contriving and intending to injure and defraud the said plaintiff in this behalf, afterwards, to wit, on the tenth day of January, 1895, wrongfully, willfully and fraudulently, and without the knowledge or consent of the said plaintiff, and without any notice to him whatever, sold
14 delivered and disposed of another portion of said five hundred shares of stock, to wit, two hundred shares of the capital stock of the Metropolitan Traction Company, property of the plaintiff, of great value, to wit, of the value of twenty-eight thousand dollars, and then and there willfully and fraudulently and with intent to cheat and defraud the said plaintiff, converted the said two hundred shares of stock and the proceeds of the sale thereof and plaintiff's reversionary interest in said stock to their own use; by means whereof the said two hundred shares of stock, and the proceeds of the sale thereof, and plaintiff's reversionary interest in said stock were wholly lost to the said plaintiff;

3. And whereas also, heretofore to wit, on and prior to the 29th day of June, 1894, at the city of Chicago, county of Cook and State of Illinois, one Charles P. McAvoy and one Edward A. Valentine, were stockbrokers and copartners doing business as stockbrokers, under the firm name of Valentine & McAvoy; and whereas, heretofore, to wit, on the 29th day of June, 1894, the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, were holding and carrying, for and on account of the said plaintiff, four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, subject to the orders of the said plaintiff, which said shares of stock the said Valentine and McAvoy as the brokers and agents of the said plaintiff, had, prior to said

last mentioned date, purchased for and on account of the
15 said plaintiff, and at his request; and whereas, heretofore, to wit, on the 30th day of June, 1894, at the city of Chicago, county aforesaid, the said Richard C. Crawford and Edward A. Valentine, defendants, were stockbrokers and were then and there copartners doing business as stockbrokers and dealers in investment securities under the firm name of Crawford and Valentine; and whereas, before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, the said plaintiff, at the special instance and request of the said defendants, had retained and employed the said defendants, as the brokers and agents of the said plaintiff to buy, hold and carry stocks for and on account of said plaintiff and subject to said plaintiff's orders, for reward to said defendants in that behalf; and the said defendants then and there accepted and entered upon such retainer and employment, to wit, at the city and county aforesaid; and thereupon, heretofore, to wit: on the 30th day of June, 1894, the said plaintiff, at the special instance and request of the said defendants, caused the said four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, of the said plaintiff, of great value, to wit, of the value of sixty-three thousand dollars, and purchased as aforesaid, by the said Valentine & McAvoy, as the brokers and agents of the said plaintiff, to be turned over transferred and delivered to and placed under the control of the said defendants to be held by
said defendants as a pledge for the amount due from plain-
16 tiff on said stock, and to be hald, carried, and kept on hand by the said defendants, as the brokers and agents of the said plaintiff, for and on account of the said plaintiff, and subject to the orders of the said plaintiff, for reward to the said defendants in that behalf, and the said defendants then and there accepted and received the said four hundred and fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said defendants, as such brokers and agents of said plaintiff, and as such pledgees, to hold as a pledge, and carry and keep on hand the said four hundred and fifty shares of stock for and on account of the said plaintiff, and subject to the said plaintiff's orders. And the said plaintiff further saith that heretofore, to wit, on the 28th day of September 1894, the said defendants, as the brokers and agents of the said plaintiff, and at the said plaintiff's request, purchased for and on account of the said plaintiff, other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property of plaintiff, of great value, to wit, of the value of seven thousand dollars, to be held as a pledge by said defendants and to be carried and kept on hand by the said defendants, as the brokers and agents of the said plaintiff and for and on account of said plaintiff, and subject to the orders of the said plaintiff, for commission and reward to the said defendants in that behalf; and the said defendants heretofore, to wit, on the day
17 and year last aforesaid, had and received the said fifty shares of stock for the purpose aforesaid, and thereupon it became

and was the duty of the said defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold as a pledge, and to keep on hand and carry the said fifty shares of stock for and on account of the said plaintiff, and subject to the orders of the said plaintiff; yet, the said defendants, not regarding their duty in that behalf, but contriving and intending to injure and defraud the said plaintiff in this behalf, afterwards, to wit, on the eleventh day of January, 1895, wrongfully, wilfully, and fraudulently, and without the knowledge or consent of the said plaintiff, and without any notice to him whatever, sold, delivered and disposed of another portion of said five hundred shares of stock, to wit, two hundred shares of the capital stock of the Metropolitan Traction Company, property of the plaintiff, of great value, to wit, of the value of twenty-eight thousand dollars, and then and there wilfully and fraudulently and with intent to cheat and defraud the said plaintiff, converted the said two hundred shares of stock and the proceeds of the sale thereof, and plaintiff's reversionary interest in said stock, to their own use; by means whereof, the said two hundred shares of stock and the proceeds of the sale thereof, and plaintiff's reversionary interest in said stock, were wholly lost to the said plaintiff;

4. And whereas, also, heretofore, to wit: on and prior to the
18 29th day of June, 1894, at the city of Chicago, county of Cook and State of Illinois, one Charles P. McAvoy and one Edward A. Valentine, were stockbrokers and copartners doing business as stockbrokers under the firm name of Valentine & McAvoy; and whereas, heretofore, to wit, on the 29th day of June 1894, the said Valentine and McAvoy, as the brokers and agents of the said plaintiff were holding and carrying for and on account of the said plaintiff, four hundred and fifty shares of the capital stock of the Metropolitan Traction Company, subject to the orders of the said plaintiff, which said shares of stock the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, had, prior, to said last mentioned date, purchased for and on account of the said plaintiff, and at his request; and whereas, heretofore, to wit, on the 30th day of June, 1894, at the city of Chicago, county aforesaid, the said Richard C. Crawford and Edward A. Valentine, defendants, were stockbrokers and were then and there copartners doing business as stockbrokers, and dealers in investment securities, under the firm name of Crawford & Valentine; and whereas, before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, the said plaintiff, at the special instance and request of the said defendants, had retained and employed the said defendants, as the brokers and agents of the said plaintiff, to buy, hold and carry stocks for and on account of said plaintiff and subject to said plaintiff's orders, for reward to said defendants in
19 that behalf, and the said defendants then and there accepted and entered upon such retainer and employment, to wit, at the city and county aforesaid; and thereupon, heretofore, to wit, on the 30th day of June, 1894, the said plaintiff at the special instance and request of the said defendants, caused the said four hundred

and fifty shares of the capital stock of the Metropolitan Traction Company, of the said plaintiff, of great value, to wit, of the value of sixty-three thousand dollars and purchased, as aforesaid, by the said Valentine and McAvoy, as the brokers and agents of the said plaintiff, to be turned over, transferred and delivered to and placed under the control of the said defendants, to be held by said defendants, as a pledge for the amount due from plaintiff on said stock, and to be carried and kept on hand by the said defendants as the brokers and agents of the said plaintiff for and on account of the said plaintiff, and subject to the orders of the said plaintiff, for reward to the said defendants in that behalf, and the said defendants there and then accepted and received the said four hundred and fifty shares of stock for the purpose aforesaid; and thereupon it was and became the duty of the said defendants, as such brokers and agents of said plaintiff, and as such pledgees, to hold as a pledge, and carry and keep in hand the said four hundred and fifty shares of stock for and on account of the said plaintiff, and subject to the said plaintiff's orders. And the said plaintiff further saith that heretofore, to wit,
20 on the 28th day of September, 1894, the said defendants, as the brokers and agents of the said plaintiff, and at the said plaintiff's request, purchased for and on account of the said plaintiff, other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property of plaintiff, of great value, to wit, of the value of seven thousand dollars, to be held as a pledge by said defendants and to be carried and kept on hand by the said defendants, as the brokers and agents of the said plaintiff, and for and on account of said plaintiff, and subject to the orders of the said plaintiff, for commission and reward to the said defendants in that behalf; and the said defendants heretofore to wit, on the day and year last aforesaid, had and received the said fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold as a pledge and to keep on hand and carry the said fifty shares of stock for and on account of the said plaintiff, and subject to the orders of the said plaintiff; And the said plaintiff further saith that heretofore, to wit, on the 28th day of March, 1895, the said defendants, as the brokers and agents of the said plaintiff, and at the said plaintiff's request, purchased for and on account of the said plaintiff, other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property
21 of plaintiff, of great value, to wit, of the value of seven-thousand dollars, to be held as a pledge by said defendants and to be carried and kept on hand by the said defendants as the brokers and agents of the said plaintiff and for and on account of said plaintiff, and subject to the orders of the said plaintiff, for commission and reward to the said defendants in that behalf; and the said defendants heretofore, to wit, on the day and year last aforesaid, had and received the said fifty shares of stock for the purpose aforesaid; and thereupon it became and was the duty of the said

defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold as a pledge and to keep on hand and carry the said fifty shares of stock for and on account of the said plaintiff; yet, the said defendants, not regarding their duty in that behalf, but contriving and intending to injure and defraud the said plaintiff in this behalf, afterwards, to wit: on the 16th day of April, 1895, wrongfully, willfully and fraudulently and without the knowledge or consent of the said plaintiff and without any notice to him whatever, sold, delivered and disposed of another portion of said five hundred and fifty shares of stock above mentioned, to wit, fifty shares of the capital stock of the Metropolitan Traction Company, property of the plaintiff, of great value, to wit, of the value of seven thousand dollars, and then and there willfully and fraudulently and with intent to cheat and defraud the said plaintiff, converted
22 the said last mentioned fifty shares of stock and the proceeds of the sale thereof and plaintiff's reversionary interest in said stock to their own use, by means whereof, the said fifty shares of stock and the proceeds of the sale thereof, and plaintiff's reversionary interest in said stock were wholly lost to the said plaintiff.

5. And whereas also, heretofore, to wit, on the 30th day of June, 1894, at the city of Chicago, and county aforesaid the said Richard C. Crawford and Edward A. Valentine, defendants, were stockbrokers, and were then and there co-partners doing business, as stock brokers and dealers in investment securities, under the firm name of Crawford and Valentine; and whereas, before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, the said plaintiff, at the special instance and request of the said defendants, had retained and employed the said defendants, as the brokers and agents of the said plaintiff, to hold and carry stocks for and on account of the said plaintiff, and subject to the said plaintiff's orders, for commission and reward to the said defendants in that behalf, and the said defendants then and there accepted and entered upon such retainer and employment, to wit, at the city and county aforesaid; and whereas the said plaintiff, heretofore, to wit, on the 29th day of January, 1895, at the special instance and request of the said defendants, caused to be delivered to and
23 placed under the control of, the said defendants, as the brokers, agents and pledgees of the said plaintiff, other and further shares of stock, to wit, three hundred shares of the capital stock of the Metropolitan Traction Company, property of the said plaintiff of great value, to wit, of the value of forty thousand dollars, to be held as a pledge and to be carried and kept on hand by the said defendants, for and on account of the said plaintiff and subject to the orders of said plaintiff, and for and as a pledge and security to the said defendants for the payment to them by the said plaintiff of the sum of twenty-four thousand dollars loaned and advanced or caused to be loaned and advanced by the said defendants to the said plaintiff; and the said defendants, on the day and year last mentioned, accepted and received the said three hundred shares of stock for the purposes aforesaid, and thereupon it became and was the

duty of the said defendants, as such pledgees, and as the brokers and agents of the said plaintiff, to hold, carry and keep on hand the said three hundred shares of stock for and on account of the said plaintiff and subject to the orders of the said plaintiff; yet, the said defendants, not regarding their duty in that behalf, but contriving and intending to injure and defraud the said plaintiff in this behalf, afterwards, to wit, on the 12th day of March, 1895, wrongfully, willfully and fraudulently, and without the knowledge or consent of the said plaintiff and without requiring payment of said loan and without any notice to the said plain-
24 tiff whatever sold, delivered and disposed of the said three hundred shares of stock of the said plaintiff, of great value, to wit, of the value of forty thousand dollars, and then and there willfully and fraudulently and with intent to injure, cheat and defraud the said plaintiff, converted the said three hundred shares of stock and the proceeds of the sale thereof and plaintiff's reversionary interest in said stock to their own use; by means whereof, the said three hundred shares of stock and the proceeds of the sale thereof and plaintiff's reversionary interest in said stock were wholly lost to the said plaintiff;

6. And whereas, also, heretofore, to wit, on the first day of October, 1894, the said defendants, as the broker and agents of the said plaintiff, had on hand and were then holding, and carrying for and on account of said plaintiff, and subject to the orders of said plaintiff, five hundred shares of the capital stock of the Metropolitan Traction Company, and were then and there protected against loss, on said stock, by margins and security theretofore paid to and deposited with said defendants by the said plaintiff; and afterwards to wit, on the 20th day of December, 1894, at the city and county aforesaid, the said defendants, contriving and intending to cheat, deceive and defraud the said plaintiff, falsely, fraudulently and deceitfully represented and affirmed to the said plaintiff that they—the said defendants, as the brokers and agents of the said plaintiff, then, to wit, on the 20th day of December, 1894, had on hand,
25 and were holding and carrying for and on account of the said plaintiff, the said five hundred shares of stock; that they, the said defendants, were then and there required and called upon to pay to and keep on deposit with their correspondents at Philadelphia, where said stock had been bought, margins and security on said five hundred shares to the extent of ten dollars per share over and above the current market value of said stock; that in order to protect them the said defendants, against loss, on account of said stock, and in order that they might be able to furnish to their correspondents the margins and security then required as aforesaid, it then and there was necessary for the said plaintiff, and the said plaintiff was then and there called upon by said defendants to pay to and deposit with them, the said defendants, a further large sum of money, to wit, the sum of two thousand dollars; and thereupon, to wit, on the day and year last aforesaid, at the city and county aforesaid, the said plaintiff confiding in the said representations and assertions of

the said defendants and believing them to be true, at the special instance and request of the said defendants, paid to and deposited with the said defendants a large sum of money, to wit, the sum of two thousand dollars, as further margins and security on said five hundred shares of stock; whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the
26 said defendants as aforesaid, the said defendants did not, as the brokers or agents of the said plaintiff or otherwise, have on hand nor were they then holding or carrying for or on account of the said plaintiff or for or on account of any one else, five hundred shares of the capital stock of the Metropolitan Traction Company, as the said defendants at the time of the making of the said false and fraudulent assertions and representations well knew; but on the contrary thereof the said defendants as the brokers and agents of the said plaintiff, then and there had on hand and were then and there holding and carrying for and on account of the said plaintiff, only four hundred shares of the capital stock of the Metropolitan Traction Company, as said defendants then and there well knew;

And whereas, in truth and in fact at the time of the making of the said false and fraudulent assertions and representations by the defendants, as aforesaid, the said defendants were not then and there required or called upon to pay or keep on deposit or otherwise, with their correspondents at Philadelphia, or elsewhere, margins or security on said five hundred shares or on any number of said shares, to the extent of ten dollars or any other sum, per share over or above the current market value of said stock, as the said defendants, at the time of the making of their said false and fraudulent assertions and representations well knew;

And whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and represen-
27 tations by the said defendants, as aforesaid, it was not necessary, in order to protect the said defendants against loss on account of said stock, or in order that they, the said defendants, might be able to furnish their said correspondents the margins or security required by said correspondents, for the said plaintiff to pay to or deposit with the said defendants, the further sum of two thousand dollars, or any sum whatever, as the said defendants at the time of the making of their said false and fraudulent representations, well knew; and the said plaintiff further saith that the said defendants by means of their said false, fraudulent and deceitful assertions and representations, afterwards, to wit, on the day and year last aforesaid, obtained and acquired from the said plaintiff a large sum of money, to wit, the sum of two thousand dollars and wrongfully and fraudulently converted the same to their own use, by means of which said several premises the said sum of two thousand dollars was wholly lost to the said plaintiff, to wit, at the county aforesaid;

7. And whereas, also, heretofore, to wit: on the 1st day of October,

1894, the said defendants, as the broker- and agents of the said plaintiff, had on hand and were then holding, and carrying for and on account of said plaintiff, and subject to the orders of said plaintiff, five hundred shares of the capital stock of the Metropolitan Traction Company, and were then and there protected against loss, on said stock, by margins and security theretofore paid to and
28 deposited with said defendants by the said plaintiff, and afterwards, on, to wit, the 11th day of January, 1895, at the city and county aforesaid, the said defendants, contriving and intending to cheat, deceive and defraud the said plaintiff, falsely, fraudulently and deceitfully represented and affirmed to the said plaintiff that they, the said defendants, as the brokers and agents of the said plaintiff, then to wit, on the 11th day of January, 1895, had on hand, and were holding and carrying for and on account of the said plaintiff, the said five hundred shares of stock; that they, the said defendants, were then and there required and called upon to pay to and keep on deposit with their correspondents at Philadelphia, where said stock had been bought margins and security on said five hundred shares to the extent of ten dollars per share over and above the current market value of said stock; that in order to protect them, the said defendants, against loss, on account of said stock, and in order that they might be able to furnish to their correspondents the margins and security then required as aforesaid, it then and there was necessary for the said plaintiff, and the said plaintiff was then and there called upon by said defendants to pay to and deposit with them, the said defendants, a further large sum of money, to wit, the sum of two thousand dollars. And thereupon, to wit, on the day and year last aforesaid, at the city and county aforesaid, the said plaintiff confiding in the said
29 representations and assertions of the said defendants and believing them to be true, at the special instance and request of the said defendants, paid to and deposited with the said defendants, a large sum of money, to wit, the further sum of two thousand dollars, as further margins and security on said five hundred shares of stock; whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations b they said defendants, as aforesaid, the said defendants did not, as the brokers or agents of the said plaintiff or otherwise, have on hand nor were they then holding or carrying for or on account of the said plaintiff or for or on account of any one else, five hundred shares of the capital stock of the Metropolitan Traction Company, as the said defendants at the time of the making of the said false and fraudulent assertions and representations well knew; but on the contrary the said defendants as the brokers and agents of the said plaintiff then and there had on hand and were then and there holding and carrying for and on account of the said plaintiff, only two hundred shares of the capital stock of the Metropolitan Traction Company, as said defendants then and *and* there well knew;

And whereas, in truth and in fact at the time of the making of the said false and fraudulent assertions and representations by the

defendants as aforesaid, the said defendants were not then and there required or called upon to pay or keep on deposit or otherwise, with their correspondents at Philadelphia, or elsewhere, margins or security on said five hundred shares or on any number of said shares, to the extent of ten dollars or any other sum, per share, over or above the current market value of said stock, as the said defendants, at the time of the making of their said false and fraudulent assertions and representations well knew; and whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants, as aforesaid, it was not necessary, in order to protect the said defendants against loss on account of said stock, or in order that they, the said defendants, might be able to furnish their said correspondents, the margins or security required by said correspondents for the said plaintiff to pay to or deposit with the said defendants, the further sum of two thousand dollars or any sum whatever, as the said defendants, at the time of the making of their said false and fraudulent representations, well knew; and the said plaintiff further saith that the said defendants by means of their said false, fraudulent and deceitful assertions and representations, afterwards, to wit, on the day and year last aforesaid, obtained and acquired from the said plaintiff a large sum of money, to wit, the sum of two thousand dollars and wrongfully and fraudulently converted the same to their own use, by means of which said several premises the said sum of two thousand dollars was wholly lost to the said plaintiff, to wit, at the county aforesaid:

8. And whereas, also, heretofore, to wit, on the 1st day of October, 1894, the said defendants as the brokers and agents of the said plaintiff, had on hand and were then holding and carrying for and on account of said plaintiff, and subject to the orders of said plaintiff, five hundred shares of the capital stock of the Metropolitan Traction Company, and were then and there protected against loss, on said stock by margins and security theretofore paid to and deposited with said defendants by the said plaintiff; and afterwards, on, to wit, the 25th day of January 1895, at the city and county aforesaid, the said defendants, contriving and intending to cheat, deceive and defraud the said plaintiff, falsely, fraudulently and deceitfully represented and affirmed to, the said plaintiff that they, the said defendants, as the brokers and agents of the said plaintiff, then to wit, on the 25th day of January, 1895, had on hand, and were holding and carrying for and on account of the said plaintiff, the said five hundred shares of stock that they, the said defendants, were then and there required and called upon to pay to and keep on deposit with their correspondents at Philadelphia, where said stock had been bought, margins and security on said five hundred shares to the extent of ten dollars per share over and above the current market value of said stock; that in order to protect them the said defendants, against loss, on account of said stock, and in order that they might be able to furnish to their correspondents the margins and security then required as aforesaid, it then and there was necessary for the said plaintiff,

and the said plaintiff was then and there called upon by said defendants to pay to and deposit with them, the said defendants, a further large sum of money, to wit, the sum of two thousand dollars. And thereupon, to wit, on the day and year last aforesaid, at the city and county aforesaid, the said plaintiff confiding in the said representations and assertions of the said defendants and believing them to be true, at the special instance and request of the said defendants, paid to and deposited with the said defendants, a large sum of money, to wit, the further sum of two thousand dollars, as further margins and security on said five hundred shares of stock;

Whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants, as aforesaid, the said defendants did not, as the brokers or agents of the said plaintiff, or otherwise, have on hand nor were they then holding or carrying for or on account of the said plaintiff or for or on account of any one else, five hundred shares of the capital stock of the Metropolitan Traction Company, as the said defendants at the time of the making of the said false and fraudulent assertions and representations well knew; but on the contrary thereof, the said defendants, as the brokers and agents of the said plaintiff, did not then or there have on hand nor were they
33 then or there holding or carrying for and on account of the said plaintiff any shares of Metropolitan Traction stock whatever, as said defendants then and there well knew; and whereas, in truth and in fact at the time of the making of said false and fraudulent assertions and representations by the defendants, as aforesaid, the said defendants were not then or there required or called upon to pay or keep on deposit or otherwise, with their correspondents at Philadelphia, or elsewhere, margins or security on said five hundred shares or on any number of said shares, to the extent of ten dollars or any other sum, per share, over or above the current market value of said stock, as the said defendants, at the time of the making of their said false and fraudulent assertions and representations, well knew; and whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants, as aforesaid, it was not necessary, in order to protect the said defendants against loss on account of said stock, or in order that they, the said defendants, might be able to furnish their said correspondents the margins or security required by said correspondents, for the said plaintiff to pay to or deposit with the said defendants, the further sum of two thousand dollars or any sum whatever, as the said defendants, at the time of the making of their said false and fraudulent representations, well knew, and the said plaintiff further saith that the said defendants by means of their said
34 false, fraudulent and deceitful assertions and representations, afterwards, to wit, on the day and year last aforesaid, obtained and acquired from the said plaintiff a large sum of money to wit, the sum of two thousand dollars and wrongfully and fraudulently converted the same to their own use, by means of which several

premises the said sum of two thousand dollars was wholly lost to the said plaintiff, to wit, at the county aforesaid;

9. And whereas, also, heretofore, to wit, on the first day of October, 1894, the said defendants as the broker and agents of the said plaintiff, had on hand and were then holding, and carrying for and on account of said plaintiff, and subject to the orders of said plaintiff, five hundred shares of the capital stock of the Metropolitan Traction Company, and were then and there protected against loss on said stock by margins and security theretofore paid to and deposited with said defendants by the said plaintiff, and afterwards, on, to wit, the 29th day of January, 1895, at the city and county aforesaid, the said defendants, contriving and intending to cheat, deceive and defraud the said plaintiff, falsely, fraudulently and deceitfully represented and affirmed to the said plaintiff that they, the said defendants, as the brokers and agents of the said plaintiff, then, to wit, on the 29th day of January, 1895, had on hand, and were holding and carrying for and on account of the said plaintiff, the said five hundred shares of stock; that they, the said defendants, were then and there
35 required and called upon to pay and keep on deposit with their correspondents at Philadelphia, where said stock had been bought, margins and security on said five hundred shares to the extent of ten dollars per share over and above the current market value of said stock, that in order to protect them, the said defendants, against loss, on account of said stock, and in order that they might be able to furnish to their correspondents the margins and security then required as aforesaid, it then and there was necessary for said plaintiff, and the said plaintiff was then and there called upon by said defendants to pay to and deposit with them, the said defendants, a further large sum of money, to wit, the sum of one thousand dollars. And thereupon, to wit, on the day and year last aforesaid, at the city and county aforesaid, the said plaintiff, confiding in the said representations and assertions of the said defendants, and believing them to be true, at the special instance and request of the said defendants, paid to and deposited with the said defendants a large sum of money, to-wit, the further sum of one thousand dollars, as further margins and security on said five hundred shares of stock; whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants as aforesaid, the said defendants did not, as the brokers or agents of the said plaintiff, or otherwise, have on hand nor were they then holding or carrying for — on account of the said plaintiff, or for or on ac-
36 count of any one else, five hundred shares of the capital stock of the Metropolitan Traction Company, as the said defendants at the time of the making of the said false and fraudulent assertions and representations well knew; but on the contrary thereof, the said defendants, as the brokers and agents of the said plaintiff, then and there had on hand and were then and there holding and carrying for and on account of the said plaintiff only three hundred shares of the capital stock of the Metropolitan Traction Company,

as said defendants then and there well knew; and whereas, in truth and in fact at the time of the making of said false and fraudulent assertions and representations by the defendants, as aforesaid, the said defendants were not then and there required or called upon to pay or keep on deposit or otherwise, with their correspondents at Philadelphia, or elsewhere, margins or security on said five hundred shares or on any number of said shares, to the extent of ten dollars or any other sum per share, over or above the current market value of said stock as the said defendants, at the time of the making of their said false and fraudulent assertions and representations well knew; and whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants, as aforesaid, it was not necessary, in order to protect the said defendants against loss on account of said stock, or in order that they, the said defendants, might
37 be able to furnish their said correspondents the margins or security required by said correspondents for the said plaintiff to pay to or deposit with the said defendants, the further sum of one thousand dollars, or any sum whatever, as the said defendants, at the time of the making of their false and fraudulent representations well knew, and the said plaintiff further saith that the said defendants by means of their said false, fraudulent and deceitful assertions and representations afterwards, to wit, on the day and year last aforesaid, obtained and acquired from the said plaintiff a large sum of money, to wit, the sum of one thousand dollars, and wrongfully and fraudulently converted the same to their own use, by means of which said several premises the said sum of one thousand dollars was wholly lost to the said plaintiff, to wit, at the county aforesaid.

10. And whereas, also, heretofore, to wit, on the 1st day of October, 1894, the said defendants as the brokers and agents of the said plaintiff, had on hand and were then holding, and carrying for and on account of said plaintiff, and subject to the orders of said plaintiff, five hundred shares of the capital stock of the Metropolitan Traction Company, and were then and there protected against loss, on said stock by margins and security theretofore paid to and deposited with said defendants by the said plaintiff; and the said plaintiff further saith that heretofore, to wit, on the
38 28th day of March, 1895, the said defendant as the brokers and agents of the said plaintiff and at the said plaintiff's request, purchased for and on account of the said plaintiff other and further shares of the capital stock of the Metropolitan Traction Company, to wit, fifty shares of said stock, property of plaintiff, of great value to wit, seven thousand dollars, to be held as a pledge by said defendant and to be carried and kept on hand by said defendants as the brokers and agents of the said plaintiff and for and on account of said plaintiff and subject to the orders of said plaintiff for commission and reward to the said defendants in that behalf, and the said defendants heretofore, to wit, on the day and year last aforesaid had and received the said fifty shares of stock for the purpose aforesaid; and afterwards to wit, on the first day of

April 1895, at the city and county aforesaid, the said defendants contriving and intending to cheat, deceive and defraud the said plaintiff falsely, fraudulently and deceitfully represented and affirmed to the said plaintiff that they, the said defendants, as the brokers and agents of the said plaintiff, then, to wit, on the 1st day of April, 1895, had on hand and were holding and carrying for and on account of the said plaintiff the said five hundred and fifty shares of stock above mentioned; that they, the said defendants, were then and there required and called upon to pay to and keep on deposit with their correspondents at Philadelphia, where said stock had been bought, margins and security on said five hundred and fifty shares of stock to the extent of ten dollars per share over and above the current market value of said stock; that in order to protect
39 them, the said defendants, against loss on account of said stock, and in order that they might be able to furnish to their correspondents the margin and security then required as aforesaid, it then and there was necessary for the said plaintiff and the said plaintiff was then and there called upon by said defendants to pay to and deposit with them, the said defendants, a further large sum of money to wit, the sum of three thousand eight hundred dollars, and thereupon, to wit, on the day and year last aforesaid, at the city and county aforesaid, the said plaintiff confiding in the said representations and assertions of the said defendant- and believing them to be true, at the special instance and request of the said defendants, paid to and deposited with the said defendants a large sum of money, to wit, the further sum of three thousand eight hundred dollars, as further margins and security on said five hundred and fifty shares of stock above mentioned; whereas, in truth and in fact, at the time of the making of the said false and fraudulent assertions and representations by the said defendants as aforesaid, the said defendants did not, as the brokers or agents of the said plaintiff or otherwise, have on hand nor were they then holding or carrying for or on account of the said plaintiff or for or on account of any one else, five hundred and fifty shares or any number of shares of the capital stock of the Metropolitan Traction Company, as the said defendants, at the time of the making of the said false
40 and fraudulent assertions and representations, well knew, but on the contrary, thereof, the said defendants as the brokers and agents of the said plaintiff, did not then or there have on hand nor were they then or there holding or carrying for or on account of said plaintiff, any shares of Metropolitan Traction stock whatever, as the said defendants then and there well knew; and whereas, in truth and in fact, at the time of the making of said false and fraudulent assertions and representations by the said defendants, as aforesaid, the said defendants were not then or there required or called upon to pay or keep on deposit or otherwise, with their correspondents at Philadelphia or elsewhere, margins or security on said five hundred and fifty shares above mentioned or on any number of said shares, to the extent of ten dollars or any other sum per share over or above the current market value of said stock as the said de-

fendants at the time of the making of their said false and fraudulent assertions and representations well knew; and whereas, in truth and in fact at the time of the making of the said false and fraudulent assertions and representations by the said defendants, as aforesaid, it was not necessary in order to protect the said defendants against loss on account of said stock or in order that they, the said defendants, might be able to furnish their said correspondents the margin or security required by said correspondents, for the said plaintiff to pay to or deposit with the said de-
41 fendants the further sum of three thousand eight hundred dollars or any sum whatever, as the said defendants, at the time of making of their false and fraudulent representations, well knew; and the said plaintiff further saith that the said defendants, by means of their said false, fraudulent and deceitful assertions and representations afterwards, to wit, on the day and year last aforesaid, obtained and acquired from the said plaintiff a large sum of money to wit, the sum of three thousand eight hundred dollars, and wrongfully and fraudulently converted the same to their own use, by means of which said several premises, the said sum of three thousand eight hundred dollars was wholly lost to the said plaintiff, to wit, at the county aforesaid;

Wherefore, the plaintiff says that he is injured and has sustained damage to the amount of thirty thousand dollars, and therefore he brings his suit, etc.

JOHN E. BURKE,
Plaintiff & Attorney pro Se.

42 [Endorsed:] 173384. John E. Burke *vs.* Richard C. Crawford & E. A. Valentine. Copy declaration. Filed Sept. 10", 1897. John A. Cooke, clerk. John E. Burke, plaintiff & att'y pro se.

43 And afterwards, to-wit, on the 20th day of September A. D. 1897 a certain plea was filed in the office of the clerk of said court, in words and figures following to-wit.

44 STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } 173,384–19960.

And the defendant, Edward A. Valentine, by Flower, Smith & Musgrave, his attorneys, comes and defends the wrong and injury, when, etc., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, in manner and form as the plaintiff has above thereof complained against

him. And of this the defendant puts himself upon the country, etc.

FLOWER, SMITH & MUSGRAVE,
Att'ys for Valentine.

Filed Sep. 20, 1897.

JOHN A. COOKE, *Clerk.*

45 And afterwards, to-wit, on the 21st day of September A. D. 1897 a certain plea was filed in the office of the clerk of said court, in words and figures following to wit:

46 STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County, September Term, A. D. 1897.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine. } Gen. No. 173,384.

And now comes the defendant Richard C. Crawford, impleaded with Edward A. Valentine, in the above entitled cause, and defends the wrong and injury, when, etc., and says that he is not guilty in manner and form as the said plaintiff hath above in his said declaration alleged against him; and of this he puts himself upon the country.

By his attorneys, PECKHAM & BROWN.

Filed Sep. 21 1897.

JOHN A. COOKE, *Clerk.*

(Copy.)

47 And afterwards to-wit, on the 11th day of January A. D. 1899 a certain appearance was filed in the office of the clerk of said court, in words and figures following to-wit.

48 Copy.

STATE OF ILLINOIS, } ss:
Cook County, }

In Circuit Court of said County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD & EDWARD A. VALENTINE. } Gen. No. 173,384, Term No. 7704. Case.

I hereby enter my appearance as attorney for plaintiff in the above entitled causes.

Dated January 10th, 1899.

A. M. PENCE.

Filed Jan. 11th, 1899.

JOHN A. COOKE, *Clerk.*

49 And afterwards, to-wit, on the 4th day of January A. D. 1900 two certain replications *was* filed in the office of the clerk of said court, in words and figures following to-wit.

50 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of said County, December Term, A. D. 1899.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine, Defendants. } Gen. No. 173,384.

And the plaintiff, as to the plea of the said Edward A. Valentine, defendant, by him above pleaded, and whereof he hath put himself upon the country, doth the like, etc.

JOHN E. BURKE, *Plaintiff.*

Filed Jan. 4 1900

JOHN A. COOKE, *Clerk.*

51 Copy.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of said County, December Term, A. D. 1899.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine, Defendants. } Gen. No. 173,384.

And the plaintiff, as to the plea of the said Richard C. Crawford, defendant, by him above pleaded, and whereof he hath put himself upon the country, doth the like, etc.

JOHN E. BURKE, *Plaintiff.*

Filed Jan. 4 1900.

JOHN A. COOKE, *Clerk.*

52 And afterwards, to-wit, on the 12th day of April A. D. 1900 two certain notices *was* filed in the office of the clerk of said court, in words and figures following to-wit.

53 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
v.
RICHARD C. CRAWFOBD and EDWARD A. Valentine. } Gen. No. 173,384, Term No. 7704.

The plaintiff will take notice that on the trial of this cause the defendant, Edward Archibald Valentine, will give in evidence under the general issue, that after the making of the several supposed promises in the declaration and the amended declaration herein, and in each count thereof mentioned and on, to wit, the 5th day of April 1900, the district court of the United States of America, for the northern district of Illinois, northern division, granted to said defendant, Edward Archibald Valentine, a certain discharge in bankruptcy in these words and figures, to wit:

"Whereas Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford and Valentine of Chicago, in said district, have been duly adjudged bankrupts under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford & Valentine, be discharged from all debts and claims which are made provable by said acts against their individual and co-partnership estates, and which existed on the 29th day of April, A. D. 1899, on which day the petition for adjudication was filed by them; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy."

That the several supposed causes of action in the said declaration and amended declaration, and in each count thereof, are in respect of debts and claims, and each of them is in respect of a debt and claim, made provable by said acts of Congress relating to
54 bankruptcy, against the estate of the said defendant, Edward Archibald Valentine, and the same were provable against his said estate, both individual and co-partnership as aforesaid; that the said supposed causes of action are not, nor is any one of them, in respect of any such debts or debt, as are or is by the said acts excepted from the operation of a discharge in bankruptcy. And the defendant will insist that by reason of said discharge in bankruptcy this defendant, Edward Archibald Valentine, was and is released from any and all the claims, debts and causes of action for which recovery is sought by the plaintiff in this case.

Yours, etc., FLOWER, SMITH & MUSGRAVE,
Attorneys for Defendant Edward Archibald Valentine.

Filed Apr. 12, 1900.

JOHN A. COOKE.

55 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine.
} Gen. No. 173,384, Term No. 7704.

The plaintiff will take notice that on the trial of this cause the defendant, Richard C. Crawford, will give in evidence under the general issue, that after the making of the several supposed promises in the declaration and the amended declaration herein, and in each count thereof mentioned, and on, to-wit: the fifth day of April, 1900, the district court of the United States of America, for the northern district of Illinois, northern division, granted to said defendant, Richard C. Crawford, a certain discharge in bankruptcy in those words and figures, to wit:

"Whereas, Richard C. Crawford and *B.* Archibald Valentine individually and as co-partners under the firm name and style of Crawford and Valentine of Chicago, in said district, have been duly adjudged bankrupts under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford & Valentine, be discharged from all debts and claims which are made provable by said acts ag-inst their individual and co-partnership estates, and which existed on the 29th day of April, A. D. 1899, on which day the petition for adjudication was filed by them; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy."

That the several supposed causes of action in the said declaration and amended declaration, and in each count thereof, are in respect of debts and claims, and each of them is in respect of a debt and claim, made provable by said acts of Congress relating to bankruptcy, against the estates of the said defendant, Richard C. Crawford, and the same were provable against his said estate, both
56 individual and co-partnership as aforesaid; that the said supposed causes of action are not, nor is any one of them, in respect of any such debts or debt, as are or is by the said acts excepted from the operation of a discharge in bankruptcy. And the defendant will insist that by reason of said discharge in bankruptcy this defendant, Richard C. Crawford, was and is released from any and all the claims, debts and causes of action for which recovery is sought by the plaintiff in this case.

PECKHAM, BROWN & PACKARD,
Attorneys for Defendant Richard C. Crawford.

Filed April 12 1900

JOHN A. COOKE.

57 And afterwards, to-wit, on the 19th day of June A. D. 1900 a certain stipulation was filed in the office of the clerk of said court, in words and figures following to-wit.

58 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of said County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. Valentine. } Gen. No. 173,384, Term No. 7704.

It is hereby stipulated and agreed that a jury trial in the above entitled cause be, and the same is hereby waived, and that said cause shall be tried by the court without a jury.

It is further stipulated that said cause may be set for trial on Tuesday, the 19th day of June, 1900.

Dated May 12, 1900.

RICHARD C. CRAWFORD.
EDWARD A. VALENTINE.
FLOWER, VROMAN & MUSGRAVE,
Att'ys for Valentine.
PECKHAM, BROWN & PACKARD,
Att'ys for Crawford.
JOHN E. BURKE, *Plaintiff.*

Filed June 19 1900.

JOHN A. COOKE, *Clerk.*

59 And afterwards, to-wit, on the 6th day of October A. D. 1900 a certain stipulation was filed in the office of the clerk of said court, in words and figures following to-wit.

60 STATE OF ILLINOIS:

Circuit Court, Cook County.

JOHN E. BURKE
vs.
R. C. CRAWFORD & E. A. VALENTINE.

It is stipulated that the above entitled action be set for trial the 23rd day of October 1900.

Dated Oct. 5, 1901.

JOHN E. BURKE, *Plaintiff.*
PECKHAM, BROWN & PACKARD,
Att'ys for Crawford.
FLOWER, VROMAN & MUSGRAVE,
Att'ys for Valentine.

Filed Oct. 6 1900.

JOHN A. COOKE, *Clerk.*

61 And afterwards, to-wit on the 14th day of November, A. D. 1900 a certain stipulation was filed in the office of the clerk of said court, in words and figures following to-wit:

62 Copy.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and E. A. VALENTINE. } Gen. No. 173,384, Term No. 2351.

It is agreed that the above entitled cause may be set for trial on Tuesday, November 26, 1900, and that the same may be placed at the head of the trial call for that day.

Dated November 14, 1900.

PECKHAM, BROWN & PACKARD,
Attorneys for Crawford.
FLOWER, VROMAN & MUSGRAVE,
Attorneys for Valentine.
JOHN E. BURKE, *Plaintiff.*

Filed Nov. 14, 1900.

JOHN A. COOKE, *Clerk.*

63 And afterwards, to-wit, on the 3rd day of January A. D. 1901 a certain plea and special plea was filed in the office of the clerk of said court in words and figures following, to-wit.

64 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, December Term, 1900.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and E. ARCHIBALD VALentine. } 173,384, 7704.

And now on this day comes said defendant, Richard C. Crawford, by Peckham, Brown & Packard, his attorneys, and says that the plaintiff ought not further to maintain his aforesaid action against him, said defendant, because he says that after the last pleading in this cause, that is to say, on to-wit: the 29th day of April, 1899, said defendant, Richard C. Crawford, filed in the district court of the United States of America for the northern district of Illinois, northern division, in which said district and division this defendant had

resided for more than the period of six months next immediately preceding said date, a voluntary petition in bankruptcy, in due form, as provided by the laws of the United States in that behalf, and thereafter, and on the 5th day of April, 1900, said district court, it having full and complete jurisdiction of said defendant for that purpose, and of the subject matter, granted to said defendant, Richard C. Crawford, a certain discharge in bankruptcy in these words and figures, to-wit:

"Whereas Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford and Valentine of Chicago, in said district, have been
65 duly adjudged bankr-pts, under the acts of Congress relating to bankruptcy and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Richare C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford & Valentine, be discharged from all debts and claims which are made provable by said acts against their individual and co-partnership estates, and which existed on the 29th day of April, A. D. 1899, on which day the petition for adjudication was filed by them; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy."

That the several supposed causes of action in the said declaration and in each count thereof mentioned, are in respect of debts and claims, and each of them is in respect of a debt or claim made provable by said acts of Congress relating to bankruptcy, against the estate of the said defendant, Richard C. Crawford, and the same were provable against his said estate, both individually and co-partnership, as aforesaid; that the said supposed causes of action are not, nor is any one of them, in respect of any such debts or debt as are or is by the said acts excepted from the operation of a discharge in bankruptcy.

And this said defendant is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his aforesaid action, etc.

PECKHAM, BROWN & PACKARD,
Attorneys for Defendant Richard C. Crawford.

STATE OF ILLINOIS, }
County of Cook, } ss:

Richard C. Crawford, being first duly sworn says that he is the above named defendant; that he has read the foregoing plea, knows the contents thereof, and the same is true.

RICHARD C. CRAWFORD.

Subscribed and sworn to before me this 12th day of May, A. D. 1900.

EDWARD O. BROWN,
Notary Public.

66 Copy.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, December Term, 1900.

JOHN E. BURKE
v.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE. } 173,384, 7704.

And now on this day comes said defendant, Edward A. Valentine, by Flower, Vroman & Musgrave, his attorneys, and says that the plaintiff ought not further to maintain his aforesaid action against him, said defendant, because he says that after the last pleading in this cause, that is to say, after the 20th of September, 1897, and on, to-wit, on the 29th day of April 1899, said defendant Edward A. Valentine filed in the district court of the United States of America, for the northern district of Illinois, northern division, in which said district and division this defendant had resided for more than the period of six months next immediately preceding said date, a voluntary petition in bankruptcy, in due form, as provided by the laws of the United States in that behalf, and thereafter, and on the 5th day of April, 1900, said district court, it having full and complete jurisdiction of said defendant for that purpose, and of the subject matter, granted to said defendant, Edward A. Valentine, a certain discharge in bankruptcy in these words and figures, to wit:

"Whereas Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford and Valentine of Chicago, in said district, have been duly adjudged bankrupts under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford & Valentine, be discharged from all debts and claims which are made provable by said acts against their individual and copartnership
67 estates, and which existed on the 29th day of April, A. D. 1899, on which day the petition for adjudication was filed by them; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy."

That the several supposed causes of action in the said declaration and in each count thereof mentioned, are in respect of debts and claims, and each of them is, in respect of a debt and claim made provable by said acts of Congress relating to bankruptcy, against the estate of the said defendant, E. Archibald Valentine, and the same were provable against his said estate, both individual and co-partnership, as aforesaid; that the said supposed causes of action are

not, nor is any one of them, in respect of any such debts or debt as are or is by the said acts excepted from the operation of a discharge in bankruptcy.

And this said defendant is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his aforesaid action, etc.

FLOWER, VROMAN & MUSGRAVE,
Attorneys for Defendant Edward A. Valentine.

STATE OF ILLINOIS, } ss:
County of Cook, }

Edward A. Valentine being first duly sworn says that he is the above named defendant; that he has read the foregoing plea, knows the contents thereof, and the same is true.

EDWARD A. VALENTINE.

Subscribed and sworn to before me this 12th day of May, A. D. 1900.

STELLA W. TENNEY,
Notary Public.

[NOTARIAL SEAL.]

Filed Jan. 3, 1901.

JOHN A. COOKE, *Clerk.*

68 Thereupon on the same day, to-wit, on the 3rd day of January A. D. 1901 two certain replications *was* filed in the office of the clerk of said court, in words and figures following to-wit.

69 STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of said County, December Term, 1900.

JOHN E. BURKE *vs.* RICHARD C. CRAWFORD and EDWARD A. VALENTINE.	Gen. No. 173,384, Term No. 2351.

Replication to the Plea of Richard C. Crawford, Defendant.

And the plaintiff, as to the plea of the defendant, Richard C. Crawford, by him above pleaded, says that he, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from further maintaining his aforesaid action against him, the said Richard C. Crawford, because the plaintiff says that the several causes of action in the declaration mentioned, and the cause of action in each count thereof mentioned, are not and is not in respect of debts or claims, nor is any or either of them in respect of a debt or claim, made provable by the acts of Congress relating to bankruptcy, against the individual or co-partnership estate of the said defendant, Richard C.

Crawford; and the plaintiff says that said causes of action are, and each of them is, in respect of such debts, claims, demands or damages as are or is, by the said act of Congress, excepted from the operation of a discharge in bankruptcy, and are not causes of action, nor is any or either of them a cause of action, in respect of any such debts, claims, demands or damages as are not, by the said acts of Congress excepted from the operation of a discharge in bankruptcy, as the said defendant has in his plea alleged; and this the plaintiff prays may be inquired of by the country, etc.

PENCE & CARPENTER,
Att'ys for Plaintiff.

THOS. A. MORAN, *Counsel.*

70 STATE OF ILLINOIS, } ss.:
Cook County, }

In the Circuit Court of Cook County, December Term, 1900.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE. } Gen. No. 173,384, Term No. 2351.

Replication to the Plea of Edward A. Valentine, Defendant.

And the plaintiff, as to the plea of the defendant, Edward A. Valentine, by him above pleaded, says that he, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from further maintaining his aforesaid action against him, the said Edward A. Valentine, because the plaintiff says that the several causes of action in the declaration mentioned, and the cause of action in each count thereof mentioned, are not and is not in respect of debts or claims, nor is any or either of them in respect of a debt or claim, made provable by the acts of Congress relating to bankruptcy, against the individual or copartnership estate of the said defendant Edward A. Valentine; and the plaintiff says that said causes of action are, and each of them is, in respect of such debts, claims, demands or damages as are or is, by the said acts of Congress, excepted from the operation of a discharge in bankruptcy, and are not causes of action, nor is any or either of them a cause of action, in respect of any such debts, claims, demands or damages as are not, by the said acts of Congress, excepted from the operation of a discharge in bankruptcy, as the said defendant has in his plea alleged; and this the plaintiff prays may be inquired of by the country, etc.

PENCE & CARPENTER,
Plaintiff's Att'ys.

THOS. A. MORAN, *Of Counsel.*

Filed Jan. 3 1901

JOHN A. COOKE, *Clerk.*

5—247

71 And afterwards, to-wit, on the 14th day of February A. D. 1901 the following proceedings were had and entered of record in said court to-wit.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } 173,384. Case.

This day again come the parties to this suit by their attorneys respectively and the court now hereafter hearing all the evidence adduced and being fully advised in the premises, finds the defendants Richard C. Crawford and Edward A. Valentine, guilty and assesses the plaintiffs damages to the sum of nine thousand and six hundred ninety dollars and twenty-one cents.

Therefore it is considered by the court that the plaintiff do have and recover of and from the defendants, Richard C. Crawford and Edward A. Valentine, his said damages of nine thousand six hundred ninety dollars and twenty one cents $9690.21 in form as aforesaid by the court assessed together with his costs and charges in this behalf expended and have execution therefor.

Thereupon the defendants having entered their exceptions herein pray an appeal from the judgment of this court to the appellate court in and for the first district of Illinois which is allowed upon said defendants filing herein their appeal bond in the penal sum of fifteen thousand dollars to be approved by the court together with their bill of exceptions within thirty days from this date.

72 Be it remembered that heretofore, to-wit, on the 12th day of April A. D. 1900 the following proceedings were had and entered of record in said court to-wit.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } Case 173,384.

On motion of attorney for Eva Valentine and Richard C. Crawford it is ordered that leave be and the same is hereby given them to file notice of special matter of defence under general issue instanter to which the plaintiff objects, objection overruled and plaintiff excepted.

73 And afterwards, to-wit, on the 23rd day of April, A. D. 1900 the following proceedings were had and entered of record in said court to-wit.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } Case 173,384.

Ordered that the time for filing exceptions to filing of new matter under general issue be extended five days.

And afterwards, to-wit, on the 19th day of June A. D. 1900 the following proceedings were had and entered of record in said court to-wit.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } Case 173,384.

On the stipulation of the parties to this suit filed herein this cause is submitted to the court for trial without a jury and set for trial on the 19th day of June A. D. 1900.

74 And afterwards, to-wit, on the 3rd day of January A. D. 1901 the following proceedings were had and entered of record in said court to-wit.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD ET AL. } Case 173,384.

Ordered that leave be and the same is hereby given said defendants to file special plea herein instanter and it is ordered that the plaintiff be and he is hereby required to reply to said special plea instanter.

75 And afterwards, to-wit, on the 14th day of March A. D. 1901 a certain stipulation was filed in the office of the clerk of said court, in words and figures following to-wit.

76 STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of Cook County, February Term, 1901.

JOHN E. BURKE
vs.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE.

It is hereby stipulated and agreed by and between parties hereto, that the original bill of exceptions in the above entitled cause may be incorporated in the transcript of the record made for the appellate court instead of a copy thereof.

FLOWER, VROMAN & MUSGRAVE &
PECKHAM, BROWN & PACKARD,
For Appellants.

JOHN E. BURKE, *Plaintiff.*

And thereupon, on the same day, to-wit, on the 14th day of March A. D. 1901 a certain bill of exceptions was filed in the office of the clerk of said court, in words and figures following to-wit.

77 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, December Term, A. D. 1900.

JOHN E. BURKE }
vs.
R. C. CRAWFORD ET AL. }

Bill of Exceptions.

Be it remembered that heretofore, to-wit, on the 3rd day of January, A. D. 1901, the same being one of the days of the December term of said court, before his honor, Edward F. Dunne, one of the judges of said court, sitting on the common law side thereof, without a jury, a jury having been waived in writing by the defendants and also by the plaintiff, this cause came on for hearing before the court without a jury.

Messrs. Pence and Moran appearing for plaintiff.

Messrs. Brown and Vrooman appearing for defendants.

And thereupon the plaintiff to maintain the issues on his part, introduced the following evidence, to-wit:

78 Mr. BROWN: I don't know whether your honor is fully aware of the fact that in this case I represent Mr. Crawford, one of the defendants, and Mr. Vrooman, of Flower & Musgrave represents Mr. Valentine the other defendant; I move, however, for him as well as for myself, for leave to file additional pleas this morning as *puis darrien* continuance.

Mr. PENCE: On behalf of both?

Mr. BROWN: On behalf of each.

Mr. MORAN: The plea, as formed, presents a wholly immaterial issue, but we are not disposed to take up the time arguing it, but we will make an issue on it, we can't of course do it at this moment, but we will go on with the trial. We will reply in accordance with the facts.

The COURT: I will give them leave to file their plea and if you make any motion after it is filed I will entertain that motion. Leave to file *puis darrien* continuance instanter and rule on the plaintiff to reply thereto instanter, that is during the trial.

Mr. BROWN: Can't you tell us anything about the nature of your reply?

Mr. PENCE: We cannot deny your discharge in bankruptcy, of course, and there is nothing else to deny except your legal conclusion.

The COURT: You will reply, in other words, admitting the
79 bankruptcy by denying the discharge of this particular debt.

Mr. MORAN: We will take issue on counsel's allegations of his plea.

The COURT: I think they will have their replication on file before coming to your side of the case.

Mr. MORAN: I think so. We cannot do anything else but deny your conclusions.

Mr. BROWN: That is satisfactory.

JOHN E. BURKE the plaintiff called as a witness in his own behalf, being first duly sworn, was examined in chief by Mr. Pence and testified as follows:

Q. What is your name?

A. John E. Burke.

Q. You are the plaintiff in this case?

A. I am, yes sir.

Q. What has been your bisiness in the past?

A. Attorney at law.

Q. How long have you resided in Chicago and Cook county?

A. Upwards of 25 years.

Q. Have you held any official position whilst you have resided in Chicago?

A. I have.

Q. What was it?

A. I was assistant United States attorney for 4 years.

Q. Did you know the firm of Valentine & McAvoy in 1893 and 1894?

A. I did.

Q. Who composed the firm?

A. Edward A. Valentine and Charles P. McAvoy.

Q. In what business were Valentine & McAvoy engaged and where?

A. They were engaged in business as bankers and brokers here in this city.

Q. Did the firm of Valentine & McAvoy dissolve and if so when?

A. They did, they dissolved about the first day of July 1894.

Q. When did the defendants form a co-partnership and in what business were they engaged?

A. They formed a co-partnership about the first day of July 1894 engaging in business as bankers and brokers here in the city.

Q. What kind of brokers?

A. Stock brokers, stock and bonds.

The COURT: Is this the new firm?

A. Yes, sir.

Q. Valentine and——

A. Crawford & Valentine.

Mr. PENCE:

Q. Valentine & McAvoy were also stock brokers?

A. Yes, sir.

Q. At the time Valentine & McAvoy dissolved partnership did you have any property in their hands or under their control?

A. I did.

Q. What was that property?

81 A. 450 shares of the capital stock of the Metropolitan Traction Company and 100 shares of the capital stock of the Chesapeake & Ohio Railroad Company, which they had bought for me as my brokers.

Q. Through whom did they purchase the Metropolitan Traction stock?

A. Through Dick Brothers & Company of Philadelphia, their correspondents at Philadelphia.

Q. 450 shares?

A. Yes, sir.

Q. At the time Valentine & McAvoy dissolved partnership what, if anything did you owe them on the stock that they held for you, and what was the market value of that stock at that time?

A. I owed them $45,949.28.

Q. Was that the market value?

A. The market value of that stock at that time was $52,531.25.

Q. When Valentine & McAvoy dissolved partnership, what was done with the stock and the amount that you owed on it?

A. The stock and the amount that I owed on it was transferred to the new firm of Crawford & Valentine?

Q. With or without your consent?

A. With my consent, to be held by them as my brokers.

Q. Did the defendant- ever purchase any Metropolitan stock for you and on your order and if so how much and when?

A. They did on the 28th day of September 1894, they purchased 50 shares of the Metropolitan Traction——

The COURT: That was the old firm?

A. No. That was the new firm.

82 Q. The dissolution took place in July 1894?

A. Yes sir. On September 28th 1894 they purchased for me on my order 50 shares of the capital stock of the Metropolitan Traction Company at 116½, and on the 28th day of March 1895 they purchased for me 50 shares more of Metropolitan Traction stock on my order at 93. Those are the only purchases that they ever made for me.

Mr. PENCE:

Q. On your order?

A. On my order or with my knowledge and——

Q. Consent?

A. Yes sir.

Q. That is these are the only purchases ever made for you on your order or with your knowledge and consent?

A. Yes sir.

Q. Through whom did the defendants make the purchases to which you have referred?

A. Through Dick Bros. & Co. of Philadelphia, their correspondents at Philadelphia.

Q. Did you ever receive from the defendants written notices of the purchases?
A. I did, yes sir.
Q. Will you produce these notices?

Mr. BROWN: We would like to see them before you put them in.
Mr. PENCE: Certainly.

A. I hand you the notice of September 28th 1894, also the notice of March 28th 1895.
83 Mr. PENCE. I think I will read them right into the record.
The WITNESS: Yes.
Mr. PENCE: I offer these in evidence and read the same into the record; they are as follows:

"Crawford & Valentine, bankers and brokers, 118 La Salle street.

CHICAGO, *September 28th*, 1894.

J. E. Burke.

DEAR SIR: We have this day bought for your account and risk 50 shares Metropolitan Traction, price 116½."

I also read the next notice——
The WITNESS: There is a signature to it.
Mr. PENCE: "Respectfully yours, Crawford & Valentine."
84 Mr. PENCE: I will also read the following in evidence:

Crawford & Valentine, bankers — brokers, 118 La Salle street.

CHICAGO, *March* 28, 1895.

J. E. Burke.

DEAR SIR: We have this day bought for your account and risk fifty shares Metropolitan Traction, price 93.

Respectfully yours, CRAWFORD & VALENTINE.

Mr. PENCE: Prior to your dealings with Crawford & Valentine did you know the firm of Jameson & Company?
A. I did.
Q. In what business were they engaged?
A. They were engaged in business as bankers and brokers.
Q. Where?
A. Here in this city.
Q. On January 29th, 1895, did Jameson & Company have any Metropolitan Traction stock belonging to you in their hands or under their control?
A. They did.
Q. How many shares?
A. 400—I mean three hundred shares of Metropolitan Traction stock, which they had purchased for me as my brokers.
Q. Through whom?
A. Through Hume & Clendenning.
Mr. BROWN: How many shares?

A. Three hundred. It was through Hume & Clendenning their correspondents at Philadelphia through whom or where the stock had been bought.

Mr. PENCE: It was held by them?

A. It was held by them.

Q. On January 29, 1895, did you have any transaction with Crawford & Valentine, the defendants, with reference to the
85 Metropolitan Traction stock, and if so state what the transactions were, and what conversations if any you had?

A. I did; on January 29th.

Q. Of what year?

A. On January 29th, 1895 I paid the defendants a thousand dollars as margins which they called for on two hundred shares of Metropolitan Traction stock.

Mr. BROWN: On how many shares?

A. On two hundred shares of Metropolitan Traction stock. After I paid the money and was about to leave the office Mr. Crawford said to me—came to me and said: "Aren't Jamieson & Company carryingsome Metropolitan Traction stock for you?" I said: "Yes; they are carrying 300 shares of Metropolitan Traction stock for me." He said: "Well, if you will have Jamieson & Company transfer or deliver that stock to us we will advance ten dollars a share or—I mean eighty dollars a share or $24,000 on the stock, and carry it for you." I said: "Very well, that would just suit me because I will then have all my Metropolitan Traction stock in the hands of one firm instead of having it at different places." I said to them: "How do you propose to manage it and make the transfer?" I said to him that that stock had been purchased by Jamieson & Company through their correspondents Huhn & Glendenning at Philadelphia, where the stock was then held, and I asked him how the arrangements could be made for the transfer. He said: "You go up to Jamieson & Company and tell them to telegraph to Huhn & Glendenning to deliver that stock for us to Toland Brothers
86 and Company our correspondents at Philadelphia, and they will advance the money—the $24,000 on the stock for us." I said: "Very well I will do so," and I immediately went up to the office of Jamieson & Company and had them telegraph to Philadelphia and had the stock transferred—I told the defendants I would go up there and have the transfer made as they suggested. I went up and had the stock and on the same day the defendants told me that the stock had been transferred all right.

Mr. PENCE: Did the defendants ever sell any Metropolitan Traction stock belonging to you on your order; and if so state when and the circumstances under which the sale was made?

A. They did. On the 28th day of January, 1894—1895—they sold one hundred shares of Metropolitan Traction stock for me on my order—I gave them an order. The order which I gave them for the sale of the stock was for three hundred shares but as a matter of fact they sold only one hundred shares belonging to me on that day. They reported to me on that date that they had sold

three hundred shares at 90⅛ but as a matter of fact they had only sold one hundred shares belonging to me. The other two hundred shares of the three hundred shares belonged to themselves; I had nothing to do with it. It wasn't mine.

Mr. BROWN: I object to the answer.

The WITNESS: Wait until I finish my answer.

Mr. PENCE: You may cross examine afterwards and bring out all the facts you wish.

87 Mr. BROWN: His statement is a conclusion of law.

Mr. PENCE: It is not; he states what he knows and you can cross examine him afterwards.

The WITNESS: That is the only sale of Metropolitan Traction stock that they ever made for me with my knowledge or on my order, or with my consent. I never knew that they had sold any Metropolitan Traction stock belonging to me except that one hundred shares until May 20, 1895. That is the first time I learned that they had sold a single share of Metropolitan Traction stock belonging to me with the exception of the one hundred shares I have just spoken of.

Q. What did they report to you that they had done touching this order?

A. They reported to me on January 28th that they had sold three hundred shares of Metropolitan Traction stock on my order at 90⅛.

Mr. VROOMAN: January 20?

A. January 28th.

Q. They reported they had sold three hundred?

A. On that day they reported to me that they had sold three hundred shares on my order at 90⅛.

Mr. PENCE: They never sold any other stock for you on your order, or with your consent?

A. No, sir; no other Metropolitan Traction stock.

Q. Did the defendants also give you written notice that they had sold 300 shares of Metropolitan Traction stock on January 28th, 1895?

A. They did.

Q. Have you got that notice?

A. Yes.

88 Q. Let me see it?

A. I now hand it to you.

Q. This is it?

A. Yes.

Mr. PENCE: I offer the same in evidence and now read it into the record as follows:

CHICAGO, *January 28th*, 1895.

J. E. Burke, Esq.

DEAR SIR: We have this day sold for your account and risk 300 shares Metropolitan Traction stock at 90⅛.

Respectfully yours, CRAWFORD & VALENTINE.

Q. Did the defendants ever call upon you to pay to them and did you pay to them margins on any particular number of shares of Metropolitan Traction stock in controversy.

A. They did and I did.

Q. State at what time or times you were so called upon and also what amount of margins you paid and on what number of shares?

A. On December 20, 1894.

Q. I don't know whether these gentlemen will object to your looking at memorandums?

Mr. BROWN: Not the slightest.

A. December 20, 1894 and on January 11, 1895, and on January 25, 1895 the defendants called upon me to pay them two thousand dollars as margins on each of those dates on 500 shares of Metropolitan Traction stock; and I paid it.

Q. What did you do?

89 A. On each of those dates I paid them two thousand dollars and that made three payments or six thousand dollars that I paid on them.

Q. Paid for what purpose?

A. As margins on the five hundred shares of Metropolitan Traction stock.

Q. Then——

A. On January 29th, 1895 they called upon me to pay them a thousand dollars as margins on two hundred shares of Metropolitan Traction stock and I paid it; on April 1, 1895 the defendants called upon me to pay them thirty-eight hundred dollars as margins on five hundred and fifty shares of Metropolitan Traction stock.

Q. What did you do?

A. I paid it.

Q. Did you know one J. F. Kilgour?

A. Yes; I did.

Q. Who was he?

A. He was an employee in the defendant's office who superintended the business about the office, and acted apparently as the manager of their business in their office under their directions.

Q. With whom did you have your conversations about margins?

A. My conversations about margins I had with both Mr. Kilgour and with Mr. Crawford, and I think that I also talked with Mr. Valentine, one of the defendants in this case, with reference to margins—putting up margins, but of that I would not be absolutely positive. But the conversations about margins were had principally with Mr. Kilgour and Mr. Crawford.

Q. State the substance of what was said and state what was done at each of the times that you paid the defendants margins?

A. On December 20, 1894, and on January 11, 1895, and

90 on January 25, 1895 when I was called upon to put up two thousand dollars margins, on each of these occasions I had my conversations in regard to margins with Mr. Kilgour or with Mr. Crawford and I think with both of them, because whenever the subject of margins came up between us they were usually together.

On January 29th, 1895 when I paid the thousand dollars as margins I can't remember distinctly as to which of the defendants I had my talk with or whether it was with Mr. Kilgour, I could not say positively which one but I am inclined to think that it was either with Mr. Crawford or with Mr. Kilgour. On April 1, 1895 the conversation I had with the defendants with regard to margins was had with Mr. Crawford and with Mr. Kilgour, both of them.

Q. Now on the occasions referred to give the substance of the conversations with reference to margins?

A. On December 20, 1894 January 11, 1895 January 25, 1895, when I was called upon for margins by the defendants the substance of the conversations was this: that they called upon me or asked me for further margins on the Metropolitan Traction stock that they were holding for me and they spoke of the market declining, of the condition of the market and they stated to me the amount of money they would require on each of those occasions and on each of those occasions Mr. Kilgour, or Mr. Crawford I think it was on- of the two
91 on those three occasions I have just mentioned would figure out and make a computation of the amount of margins required on five hundred shares of Metropolitan Traction stock.

Q. On 500 shares?

A. On five hundred shares on those three occasions. Figured out on the counter, in each one of these instances.

Q. What rate of margin was required or what per cent.?

A. There was no particular amount ever required of me—no percentage, no particular per cent. was I ever called upon to pay except upon the first day of April, 1895 when they said they wanted ten point margins; that was the first time they ever asked me for a ten point margin. January 29th when I was called upon to pay one thousand dollars margins the computation was made on 200 shares and that was the amount they required me to put up as margin at that time. On April 1, 1895 when I paid $3800 as margins—as I stated before the conversation was had with Mr. Crawford and with Mr. Kilgour, and as I said before they asked me to put up $3800. The way the conversation started then—the conversation was this: On that morning April 1, 1895 they handed me my monthly statement of account for the month preceding, that is for the month of March, 1895, and then asked me—there referred to the condition of the market and asked me to put up further margins on 550 shares of stock, Metropolitan Traction stock. I said to them that I was—that I didn't have much ready money then or words to that effect—I hadn't much spare finds just then, just at
92 that time, and I didn't see how I could put up further margins unless I could find somebody to assist me or unless I could borrow the money. Well, they said that unless I did put up further margins, that is further margin the stock, they would be compelled to sell it out. I said "Well I will see what I can do." I went immediately to the office of Mr. William Kent and requested Mr. Kent to assist me in the matter, and asked him to go with me up to the defendants' office and have a talk with them and

see what arrangement could be made. Mr. Kent did go up with me to their office and when we went in and the first thing I think that Mr. Kent did was to ask where Mr. Valentine was. Some one in the office, I don't remember now who, said that he was up on the floor of the stock exchange in the same building. Mr. Kent went up stairs—at least he went out of the office to go up stairs and when he returned he said that Mr. Valentine told him that I had fifty shares that I had bought only a few days before and that they were carrying for me now instead of five hundred shares five hundred and fifty shares of Metropolitan Traction stock. A conversation was then had between Mr. Kilgour, Mr. Crawford, Mr. Kent and myself. Mr. Crawford and Mr. Kilgour standing on the inside of the counter Mr. Kent and myself on the outside of the counter. Mr. Kent said to them—the first thing he did was to ask them how much Metropolitan Traction stock they were carrying for me and they replied that they were—Mr. Crawford replied that they
93 were carrying 550 shares of Metropolitan Traction stock and one hundred shares of Chesapeake and Ohio stock. Mr. Kent——

Q. What if anything did they say in that connection that they would do?

A. First Mr. Kent said—before Mr. Kent said what he would do, after stating what amount of stock they were carrying for me they said they wanted margins on it on account of the condition of the market, and unless the margins were paid they would have to sell the stock out. Mr. Kent then said: "I have come here to protect Mr. Burke's Metropolitan Traction stock," and he wanted to know how much they required. They said ten points. They ought to have ten points. ten dollars a share on the stock. I said right there: "In that connection I will put up five hundred dollars." "Of the amount required?" Mr. Kilgour then took a pencil and a piece of paper that lay upon the counter there and he entered upon the paper 550 shares of Metropolitan—he put down 500 and then made a computation of how much would be required in order to make a ten point margin, and how much would be required of Mr. Kent. It figured up to $3300 and he then said—or Mr. Crawford, I don't remember which one now distinctly——

Q. They were both right there together.

A. They were both there talking. The conversation was had between all of us standing there at the same time. They said: "But there is one hundred shares of Chesapeake and Ohio." that ought to be margined, Mr. Burke has 100 Chesapeake and Ohio with us that ought to be margined and Mr. Kent said: "I don't
94 know anything about that and I don't care anything about that; and I won't have anything to do with Chesapeake and Ohio. I come here to protect the Metropolitan Traction stock and the Chesapeake and Ohio I won't have anything to do with." I then gave an order right there to sell out the 100 shares of Chesapeake and Ohio at once. It was sold and the sale reported to me that day.

Q. What did Kent do then.

A. Mr. Kent then gave them his check for $3800 and I paid them 500 and that made the $3800 that was paid to them as margins on 550 shares of Metropolitan Traction stock on that day.

Q. Did Mr. Kent say anything to them after paying it or at the time of paying it——

A. Before he paid——

Mr. BROWN: Is that your question?

Mr. PENCE: Did he say anything in regard to what he wanted and what was the distinct understanding with him?

A. I understood—he said at that time before he paid the money—"I want it distinctly understood that when Mr. Burke's account shows a margin in excess of the ten points on this Metropolitan Traction stock——

Q. That is ten dollars per share?

A. Ten dollars per share—"when Mr. Burke's account shows margins more than ten dollars per share on this Metropolitan Traction stock then——

Q. That is above the market price?

A. Above the market price—yes; "then out of those margins, out of that excess I shall be paid."

Q. Over ten dollars a share.

95 A. Yes; when it goes up to $3300, that I shall be paid that back, and it was assented to by them and there was an order—I then and there wrote out an order to that effect and signed it and left it in the defendant's office.

Q. That is that they pay Kent $3300——

A. That they pay Kent out of the excess above ten per cent. up to $3300——

Mr. VROOMAN: I was going to suggest that if that order was here we could tell better by that what it contains.

The WITNESS: You had the order at the last trial of the case.

Mr. VROOMAN: It is attached to some deposition in the case here.

The WITNESS: There is no original attached that I know of.

Mr. BROWN: Is it not attached to Mr. Kent's deposition?

A. Not that I know of. No; a copy of it is attached.

Mr. VROOMAN: The original has been mislaid.

The WITNESS: There will be no question about that order.

Mr. PENCE: Was that money paid to Mr. Kent by the defendants on that order.

A. It was not.

The COURT: Go on.

A. On May 13, 1895 I was in the defendants' office and Mr. Crawford said to me—or Mr. Kilgour, I have forgotten which—that Mr. Kent had been to the office and wanted the money that he had put up for me and that they would rather not pay it to him unless I gave a new order, or words to that effect, and I then went down to Mr. Kent's office and made a computtation of the interest——

96 Q. Due to Mr. Kent?

A. I went to Mr. Kent's office and made a computation of the interest on $3300 from April 1,—the day that he let me have the money—up to that day May 13, 1895, interest at six per cent.—as I wanted to pay Mr. Kent not only the money that he paid for me but interest also—the first order was simply for the principal. The second order included the interest it figured up to $23.65, I think.

Q. Making a total of——

A. $3323.65.

Q. $3323.65—that was the second order?

A. That was the second order, yes, sir.

Q. Did the defendants give you written notice of——

Mr. BROWN: Was that order paid?

A. That was paid as I understand it, yes, sir.

Mr. VROOMAN: To Mr. Kent?

A. It was paid to Mr. Kent, yes, sir.

Mr. PENCE: Did the defendants give you written notice of the alleged sale of your hundred shares of Chesapeake and Ohio?

A. Yes.

Q. Have you that notice?

A. Yes; and I hand it to you.

Q. Is this that notice?

A. Yes.

Mr. PENCE: I offer it in evidence and read it in the record as follows:

CHICAGO, *April* 1, 1895.

J. E. Burke, Esq.

DEAR SIR: We have this day sold for your account and risk 100 shares, Chesapeake and Ohio price 17¾.

Respectfully yours, CRAWFORD & VALENTINE.

97 Q. Was the sale made in April 1895 as stated in the notice?

A. No, sir; it was not. It was made several months prior to that time. They didn't have any Chesapeake and Ohio at that time.

Mr. BROWN: What is the purpose of that. Has that anything to do with this case?

Mr. PENCE: Incidentally it has. But it is hardly necessary to go into an argument now and I will drop it for the present.

Mr. BROWN: I make a motion to strike that out. I object both to the question and the answer.

The COURT: Is there anything about the sale of Chesapeake and Ohio——

Mr. PENCE: It is the course of conduct, we have the right to other acts outside of the acts complained of to show fraudulent intention.

The COURT: The general course of dealing. Motion overruled.

To which ruling of the court counsel for the defendants then and there duly excepted.

Mr. PENCE: Do you know whether the defendants sold Metropolitan Traction stock which they were carrying for you and which is in controversy in this case?

A. Yes.

Q. Please state when they did so?

A. Please read that question again.

Q. Do you know whether or not the defendants sold Metropolitan Traction stock which they were carrying for you and which is in controversy in this case. If you do state when they did so?

A. I do. On October 24, 1894 they sold one hundred
98 shares of Chesapeake and Ohio stock belonging to me at 109¼ amounting to $10,925. On January 10, 1895——

Mr. BROWN: Are we not entitled to know how he knows?

Mr. PENCE: If he does not know they can quickly find it out on cross examination. He says he knows and it is competent.

Mr. BROWN: Is he competent to testify that he knows that they sold——

The COURT: Mr. Burke is a lawyer himself and I assume that he is testifying from personal knowledge.

The WITNESS: I will show my knowledge.

Mr. PENCE: You will have no trouble in finding out from this gentleman in regular course without interrupting him.

Mr. BROWN: I do not desire to interrupt him.

Mr. PENCE: I am not finding fault with you at all.

The WITNESS: On January 10, 1895 they sold one hundred shares of Metropolitan Traction stock belonging to me at 100¾ amounting to $10,075. On January 11, 1895 they sold two hundred shares of Metropolitan Traction stock belonging to me at 101½ amounting to $20,300. On January 28, 1895 they sold one hundred shares of Metropolitan Traction stock belonging to me at 90⅛ amounting to $9,012.50. On March 13, 1895 they sold three hundred shares of Metropolitan Traction stock belonging to me at 96⅞ amounting to $29,025; on April 16, 1895 the defendants sold 50 shares of Metropolitan Traction stock belonging to me at 89½ amounting to $4,475.

Q. What was the market price of Metropolitan Traction
99 stock on the dates you have just mentioned. You have given certain figures; was that the market price at that date?

A. I have given the figures at which they sold them.

The COURT: I have all of those totals except the 29th; how much was that?

A. $29,925.

Q. When was that sold?

A. That was sold March 13. The prices of Metropolitan Traction stock were as follows: July 1, 1894, 113⅛; October 24, 1894 the market price was 109⅜; on December 20, 1894 the market price was 104½; on January 1, 1895 the market price was 106. On January 10, 1895 the market price was 101½. On January 11, 1895 the market price was 101⅝. On January 25, 1895 the market price was 97½; on January 29th, 1895 the market price was 91¼. March 13,

1895 the market price was 96⅜. On April 16, 1895 the market price was 89¼.

Mr. PENCE: You did not state the price January 28, 1895.

A. I think I did, sir.

Q. No; not the 28th.

Mr. VROOMAN: What was it on the 29th?

A. 29th, 91¼.

Mr. PENCE: On each of these occasions when you paid the defendants money as margins on Metropolitan Traction stock do you know how many shares of Metropolitan Traction stock belonging to you they had on hand or were carrying for you at such times; if so state the number of shares?

A. I do. On December 20, 1894 when I paid the defendants two thousand dollars in margins they had on hand belonging to
100 me only 400 shares of Metropolitan Traction stock. On January 11, 1895 when I paid them $2000 margins on 500 shares of Metropolitan Traction stock they had only three hundred shares on hand belonging to me. On January 25, 1895 when I paid them two thousand dollars as margins on 500 shares of Metropolitan Traction stock they had on hand belonging to me only 100 shares of Metropolitan Traction stock. On January 29, 1895 when I paid the defendants one thousand dollars margins on two hundred shares of stock—Metropolitan Traction—they didn't have any Metropolitan Traction stock of mine on hand whatever. On April 1, 1895 when I paid them $3,800 margins on 550 shares of Metropolitan Traction stock they had on hand fifty shares only of Metropolitan Traction stock belonging to me.

Q. If the defendants sold your Metropolitan Traction stock as you say they did and had credited you at the time of sale with the proceeds or with the market value of the stock at such times how would your account with the defendants have stood on April 1, 1895 before you paid them the $3800 margins?

The COURT: If they had sold as they reported.

Mr. PENCE: If the defendants sold your Metropolitan Traction stock as you say they did and had credited you at the time of sale with the proceeds or market value of the stock at such times, how would your account with the defendants have stood April 1, 1895 before you paid them $3800 as margins?

Mr. VROOMAN: I don't quite understand that.

A. The fifty shares—this is on April 1?

The COURT: The day you paid the $3800.

101 Mr. PENCE: How would your account have stood if they had given you credit for the sales at the time they actually made them.

A. Fifty shares of Metropolitan Traction stock which they then had on hand belonging to me and the 100 shares of Chesapeake stock for which I gave order of sale on that day, would have been fully paid for and my account would have further shown a balance to my credit of——

526 *Dr.* JOHN E. BURKE

Date.				Price.		Amount.		
Sept.	29		Balance Long.....			52,609	19	
		500	Met. Trac. and 100 C. & O...					
Oct.	8	100	Sugar, etc.....	84¾		8,487	50	
	31		Interest			268	69	
						61,365	38	
Oct.	31		Balance.....			52,227	88	
		500	Met. and 100 C. & Ohio	On	hand			

526 *Dr.* JOHN E. BURKE

Date.				Price.	Amount.			Days.
Oct.	31		Balance Long.....		52	227	88	30
		500	Met. Trac. and 100 C. & Ohio					
Nov.	15	100	Sugar, 100 C. & Ohio..	87½	8	762	50	15
	23	100	" " "	87½	8	762	50	7
	30		Interest.....			263	95	
					70	016	83	
Nov.	30		Balance, Long.....		52	441	83	
		500	Met. Trac. and 100 C. & O.....					

CRAWFORD & VALENTINE.

JOHN E. BURKE — IN ACCOUNT WITH R. C. CRAWFORD. — *Cr.*

	Price.		Amount.	Days.	Interest.	Date.		Price.	Amount.	Days.	Interest.
ng.....			52,609 19	31	271 80	Oct. 2	Dividend 500 Met.....		625	29	3 02
. and 100 C.											
.....						4	100 Sugar S. Lc.....	85¼	8,512 50	23	32 62
....	84¾		8,487 50	23	32 53	31	Balance account and interest.		52,227 88		268 69
....			268 69								
			61,365 38		304 33				61,365 38		304 33
.....			52,227 88								
100 C. & Ohio	On	hand			E. & O. E.						

JOHN E. BURKE — IN ACCOUNT WITH CRAWFORD & VALENTINE. — *Cr.*

	Price.	Amount.	Days.	Interest.	Date.			Price.	Amount.	Days.	Interest.
ce Long.....		52 227 88	30	261 13	Nov.	16	100 Sugar, Lc.....	88⅛	8 800	14	20 53
. Trac. and 100 C. & Ohio						24	100 " "	87⅞	8 775	6	8 77
r, 100 C. & Ohio..	87½	8 762 50	15	21 90		30	Balance, interest.....				263 95
" "	87½	8 762 50	7	10 22			" account.....		52 441 83		
rest.....		263 95									
		70 016 83		293 25					70 016 83		293 25
nce, Long.....		52 441 83									
. Trac. and 100 C. O.....				E. & O.E.							

585 *Dr.* JOHN E. BURKE IN ACCOUNT WITH CRAWFORD & VALENTINE. *Cr.*

Date.				Amount.	Days.	Interest.	Date.			Price.	Amount.	Days.	Interest.
Nov.	30		Balance, Long.....	52 441 83	31	270 94	Dec.	20	Currency.....		2 000	11	3 66
		500	Met. Trac. 100 C. & Ohio.....										
Dec.	31		Interest.....	267 28					Balance account and interest.....		50 709 11		267 28
				52 709 11		270 94					52 709 11		270 94
			Balance.....	50 709 11									
		Long.	500 Met. Traction, 100 Ches. & Ohio.....					O. E.					

585 *Dr.* JOHN E. BURKE IN ACCOUNT WITH CRAWFORD & VALENTINE. *Cr.*

Date.				Price.	Amount.	Days.	Interest.	Date.			Price.	Amount.	Days.	Interest.
Dec.	31		Balance.....		50 709 11	31	218 32	Jan.	11	Check.....		2 000	20	5 55
		100	Ches. & Ohio.....						17	Div. 1¼ 500 Met.....		625	14	1 20
		500	Met. Trac.....						25	Check.....		2 000	6	1 66
Jan.	29	300	Met. Trac. Jamison & Co.....		24 000 00	2	6 67		28	300 Met. Trac.....	90⅛	27 000	3	11 25
	31		Interest.....		205 06				29	Check.....		1 000	2	27
									31	Balance account.....		42 289 17		
										" interest.....				205 06
					74 914 17		224 99					74 914 17		224 99
Jan.	31	100	Balance.....		42 289 17									
		500	Ches. & Ohio Com. on hand.....											
			Met. Trac. Com. on hand											

585 *Dr.* JOHN E. BURKE IN ACCOUNT WITH CRAWFORD & VALENTINE. *Cr.*

Date, 1895.				Price.	Amount.	Days.	Interest.	Date.				Price.	Amount.	Days.	Interest.
Jan.	31		Balance		42 289 17	28	164 45	Feby.	28		Balance account and interest		42 453 62		164 45
		500	Met. Trac. on hand												
Feby.	28		Interest		164 45										
					42 453 62		164 45						42 453 62		164 45
Feby.	28		Balance		42 453 62										
		500	Met. Trac. on hand												

585 *Dr.* JOHN E. BURKE IN ACCOUNT WITH CRAWFORD & VALENTINE. *Cr.*

Date 1895.				Price.	Amount.	Days.	Interest.	Date.				Price.	Amount.	Days.	Interest.
Feby.	28		Balance		42 453 62	31	182 77	Mar.	5	½	Profit 10 May. Wht		6 25	26	02
		500	Met. Trac. on hand								Balance account		47 288 30		
Mar.	28	50	" "	93	4 656 25	3	1 93				" interest				184 68
	30		Interest		184 68										
					47 294 55		184 70						47 294 55		184 70
Mar.	30		Balance		47 288 30										
		100	C. & O. on hand												
		550	Met. Trac												

Dr. J. E. BURKE IN ACCOUNT WITH CRAWFORD & VALENTINE. *Cr.*

Date.				Price.	Amount.	Days.	Interest.	Date.				Price.	Amount.	Days.	Interest.
Apl.	1		Balance		47 288 30	35	236 44	Apl.	1	100	C. & O	173¾	1 762 50	29	
		550	Met. Traction on hand								Ck. Wm. Kent		3 300	29	
		100	C. & O								" Jamieson & Co		500	29	26 87
	30		Interest		207 98				16		Div. 550 Met. Trac		687 50	14	1 59
									30		Balance account and interest		41 246 28		207 98
					47 496 28								47 496 28		236 44
Apl.	30		Balance		41 246 28										
		550	Met. Trac. on hand		E. & O. E.										

Q. I don't think you need stop now to give the exact figures but between what sums?

A. I will give it to you exactly in a moment.

The COURT: About five thousand dollars?

A. Between $5200 and $5300.

Mr. PENCE: $5397.58 wasn't — ?

A. That is correct.

Q. Of course a man can't carry all these amounts in his head. State whether or not the defendants rendered to you a monthly statement of account—every month—for the months of October, November, December, 1894, and January, February, March and April 1895?

A. They did.

Q. When were they rendered or handed to you?

A. They were handed to me on the first day of each month and purported to cover the transactions for the preceding month.

Q. If you have those accounts with you you may hand them to me.

A. I have them and here they are.

(Witness hands papers referred to to counsel.)

102 Mr. PENCE: I offer in evidence, and I will give your honor the substance of them and let the reporters copy them exactly from the document because it is a little difficult to read them in the record just as they are. I will offer them and read them into the record here as follows:

(Here insert monthly statements, "Exhibit 1.)

•

(Here follow facsimiles marked pp. 103, 104, 105, and 106.)

•

107 The COURT: What is long?

A. It is what they had on hand.

Q. You were long instead of short?

A. Yes sir.

Mr. PENCE: They claim that they had them on hand and we claim they did not, that they were sold.

The COURT: Then you were in debt on this first statement $52,227, is that it?

A. Yes sir.

Q. $52,441 on the second one?

A. According to the accounts rendered.

Q. $50,709 on the third?

A. Yes sir.

Q. $42,289 on the fourth?

A. Yes sir.

Mr. PENCE: It shows on the bottom on the left hand side how much they carried in each case.

The WITNESS: I received no credit for any of the sales except the 300 that they sold January the 28th.

Mr. PENCE: I want to show that these were the reports that were made and that they do not represent the true facts at all.

The WITNESS: Identify them by the month.

Mr. PENCE: I have given the dates already.

Q. On January 29th 1895 and on each of the occasions when you paid the defendants money as margin; what reliance, if any, did you place on the statements rendered to you and representations which you say they made to you with reference to Metropoli-

108 tan Traction stock and the number of shares of the same that they had on hand and were carrying for you?

A. I relied——

(Question read.)

Mr. BROWN: I object to that question.

Which objection was overruled by the court. To which ruling of the court counsel for defendants then and there duly excepted.

A. I relied upon the statements which they rendered to me and upon the representations.

The COURT: And believed them to be true.

A. Which they made to me and I believed them to be true otherwise I would not have paid them the money that I did as margins, or any of it, neither would I have turned over the 300 shares of Metropolitan—turned over to them the 300 shares of Metropolitan stock I had in the hands of Jamieson & Company.

Mr. PENCE:

Q. Were you in the defendants' office on May 20th, 1895?

A. I was.

Q. About what time of the day?

A. About 9 o'clock in the morning of that day.

Q. What is the first thing you did when you went there?
A. The first thing I did when I went there was to give an order to have the Metropolitan Traction stock which I supposed I had in Philadelphia in the hands of the correspondents of Crawford & Valentine, sent here from Philadelphia to be taken up and paid for here.
109
Q. How did you give the order?
A. I gave it verbally and also wrote out—I gave the order to an employee in the office and also wrote out an order upon Dick Brothers & Co. and upon Toland Brothers & Co., they were the correspondents of the defendants in Philadelphia, where I supposed the stock was.
Q. What did you do, you say you wrote out an order?
A. And handed it to an employee in the office to be forwarded to Philadelphia, those orders.
Q. Directed it to be sent to your account?
A. Directing the stock to be forwarded here, to be taken up here and paid for.
Q. Not in your own name?
A. No sir, I didn't sign the order, I wrote out the form of the order.

The COURT:

Q. In which office, Jamieson's office?
A. No, in Crawford & Valentine's office.

PENCE:

Q. What did you then do?
A. I went out of the office and returned in a few minutes and inquired——
Q. When you returned did you learn whether your orders had been sent?
A. I ascertained that they had not been sent.
Q. Did you learn why?
A. Yes sir.
Q. And what if any reasons were *were* given you?
A. The reason given was because the stock had been sold.
110
The COURT: Which stock are you speaking about now?
A. The Metropolitan Traction stock.
Q. The stock that you ordered purchased?
A. The stock that I supposed they had in their hands on that day.
Mr. PENCE: What was the condition of the business at that time?
A. The business was running as usual that day. I didn't see Mr. Valentine or Mr. Crawford there.
Q. Or Mr. Kilgore?
A. Or Mr. Kilgore either, neither of them there, but the other employés of the office were there and business seemed to be conducted as usual.
The COURT: What day was that?
A. On May 20th, 1895, the day when they suspended payment.

Mr. PENCE:

Q. When did you first learn that the defendants had suspended?

A. Between 11 and 12 o'clock on Monday morning the 20th day of May 1895.

Q. At the different times when you say the defendants sold your Metropolitan Traction stock, if you had been credited with the proceeds of the sale, or with the market value of the stock which you say these defendants sold, how would your account with the defendants stand on May 20th 1895?

A. My account would have shown a credit to me of $12,260.

Q. On or since May 20th 1895 has the defendants or either
111 of them paid you anything?

A. No sir, not a dollar.

Cross examination.

By Mr. BROWN:

Q. Mr. Burke, you knew the business of Crawford & Valentine, that they were stock brokers, did you not, during all these transactions?

A. I supposed them to be, yes sir.

Q. They were doing a stock brokerage business, were they not?

A. They advertised themselves as doing business as bankers and brokers and investors in securities.

Q. Did you know of their course of business between here and New York and here and Philadelphia, did you know of their having a private wire to Philadelphia and a private wire to New York?

A. I knew that they telegraphed orders to New York, I do not know that I knew that they had a private wire, I didn't know how they communicated, except by some wire, by telegram.

Q. Did you know where the Metropolitan Traction stock, the actual certificates of the Metropolitan Traction stock were dealt in—what markets they were dealt in particularly?

A. I suppose I did, yes.

Q. Where?

A. Philadelphia.

Q. Philadelphia and here?

A. Not upon the market here, I didn't understand it so.
112 That is on the stock exchange here, I never knew that they dealt in any Metropolitan Traction stock.

Q. You never saw a certificate of Metropolitan Traction stock, did you, here?

A. Yes sir.

Q. When?

A. I saw certificates two or three different times. Metropolitan Traction stock.

Q. Where?

A. Here, in this city.

Q. Here in Chicago?

A. Yes sir, here in Chicago, I saw them here.
Q. When?
A. Well, it was prior to my having any dealings with the defendants, some little short time prior.
Q. Where did you see them?
A. I saw them in Jamieson & Company's office here in the city.
Q. What was the par value of Metropolitan Traction stock?
A. $100 per share.
Q. You said that you were called upon to put up margins at different times?
A. Sir?
Q. You said that you were called upon to put up margins at different times?
A. Yes sir.
Q. What do you mean by that? What are margins?
A. I understood margins to be part payment upon the stocks and as securities for the brokers who were carrying the stocks for me.
113 Q. But they were not part payment on the stock if you had an agreement or arrangement with them that they were to pay back those margins if the stock went up?
A. I don't understand your question, Mr. Brown.
Q. These margins you were not only called upon to pay, but you expected to receive back any excess which their books showed them to be indebted to you over a certain margin of a certain number of points, did you not?
A. No sir, I did not.
Q. Was there ever any money paid by them back for margins except the money paid to Mr. Kent?
A. No sir.
Q. You say that you did not expect to receive back any money which you had paid in margins?
A. No sir.
Q. If the stock went up beyond a certain point?
A. No sir. I intended that all the money that I paid in should be applied in payment on the stock, I didn't intend to withdraw any moneys that I had paid them on the stock, I never intended to withdraw a cent of it.
Q. Did you ever know of any particular certificates of stock that were bought for you or on your account so that you could identify them?
A. I was never told the numbers of any certificates of stock that were purchased for me and consequently I didn't have any knowledge on that point as to the number or date of the certificate.
Q. You knew through whom Crawford & Valentine were dealing in Philadelphia, did you not?
A. I did, yes sir.
114 Q. Who were they dealing through?
A. They were dealing first through Dick Brothers & Co. and afterwards I learned that they were dealing through Toland Broth-

ers & Company of Philadelphia—with both Dick Brothers & Company and Toland Brothers & Co. after some time in January when I learned it, that they were dealing through those firms as their correspondents in Philadelphia.

Q. Now when you knew that you ordered Metropolitan Traction stock bought—you knew that when you ordered or instructed Crawford & Valentine to buy any Metropolitan Traction stock for you that the course of business was that they ordered Dick Brothers & Co. to buy for them in Philadelphia, did you not?

A. I supposed, as a matter of course that they would buy the stock through Dick Brothers & Company who were their correspondents there.

Q. But you knew the course of business, you knew that they would order that stock bought through Dick Brothers & Co. and carried for their, Crawford & Valentine's account, with Dick Brothers' account did you not?

A. I suppose so, yes, unless they ordered the stock when bought for me to be sent here to Chicago.

Q. That is not the question: You knew that the regular course of business did not involve their sending that stock to Chicago did you not—Dick Brothers—you knew that it involved merely the purchase in Philadelphia by Dick Brothers for the account of
115 Crawford & Valentine of certain stock?

A. I knew that it also involved more, Mr. Brown.

Q. I am not asking you that. You knew that was the course of business—you knew it did not involve the sending of that stock to Chicago in the course of business which they were conducting?

A. I didn't know whether in the course of business that stock would be kept there or sent here, but I supposed it would be kept there until it was ordered here.

Q. That is enough. Now, Mr. Burke, you knew, also, that it was kept—that the account of Crawford & Valentine—that your name and the name of no other customer of Crawford & Valentine was given to Dick Bros. or Toland & Co. when the stock was bought, did you not?

A. I didn't understand that my name would be given either to Toland Brothers or Dick Brothers & Company.

Q. You knew that the course of business would prevent that, didn't you—that that was not in the course of business?

A. So far as the course of business was concerned I cannot say that I knew very much about it, except that I did not expect that that would be done, that my name would be given. I think that answers your question.

Q. Hadn't you been dealing in stocks a good deal, speculating in stocks a good deal?

A. Not a great deal no sir.

Q. These accounts show sugar stock, don't they?
116 A. Yes, the accounts are there.

Q. To a very considerable extent, and Chesapeake & Ohio. Were you dealing in wheat with these gentlemen?

A. Not that I remember of.

Q. You also had been dealing through other stock brokers and you were acquainted with the general business of the stock markets, the course of business between here and New York and Philadelphia on the part of stock brokers?

A. I can't say that I was.

Q. You had been dealing through Jamieson & Company?

A. I had dealt through Jamieson & Company.

Q. And no other stock brokers here?

A. I think not.

Q. For how long had you been dealing in stock?

A. Crawford & McAvoy——

Q. Crawford & McAvoy, Crawford & Valentine and Jamieson & Company. For how long before 1895 had you been dealing in stocks, if at all, this way?

A. Oh, perhaps a year and a half that I had dealt some in stocks.

Q. Now, Mr. Burke, you knew, did you not that if Crawford & Valentine had been ordered by a customer to sell stock in Philadelphia, Metropolitan Traction stock in Philadelphia to some other customer, that they could and would in the ordinary and general course of business, have ordered that stock sold through Dick Brothers & Company in Philadelphia whether or not it had been purchased by that same customer for their account,
117 did you not?

A. (No answer.)

Q. You knew, in other words, that in the general course of business customers of Crawford & Valentine might order them to sell Metropolitan Traction stock short, as it is called?

A. I suppose they could have done so, yes.

Q. You knew that if Metropolitan Traction stock was ordered sold short by, we will say, Mr. Pullman, or Mr. Yerkes through Crawford & Valentine, that their method of doing it would be to order Dick Brothers & Company of Philadelphia to sell so many shares of Metropolitan Traction stock for their, Crawford & Valentine's account, wouldn't it?

A. I suppose so.

Q. Now in such a case supposing that you, Mr. Burke, had ordered 500 shares bought and Crawford & Valentine had ordered Dick Brothers & Company in compliance with that order to buy 500 shares Metropolitan Traction stock for the account of Crawford & Valentine, and Mr. Yerkes had ordered Crawford & Valentine to sell 500 shares of Metropolitan stock short, and they had ordered Dick Brothers & Company to do that, what would have been the result upon Crawford & Valentine's account with Dick Brothers & Company so far as the actual stock was concerned?

A. Now that is a very involved question.

(Question read.)

The COURT: Suppose they had an order to sell the same
118 day.

Mr. BROWN: From the different people. What would be

the effect as to the account between Crawford & Valentine and Dick Brothers & Company, and what would be the effect upon Dick Brothers & Company having any actual stock in their hands for the account of Crawford & Valentine?

Mr. MORAN: What difference does it make?

Mr. BROWN: Examine the accounts and you will know.

Mr. MORAN: That is not cross examination.

Mr. BROWN: You suggested that the general course of business was proper. I wish to prove that it was a contractual relation; we have a right to show on cross examination that it was a contractual relation.

Mr. MORAN: Between whom?

Mr. BROWN: Between Mr. Burke and Crawford & Valentine.

Objection overruled; exception by counsel for plaintiff.

Q. (Question read)?

A. I can't say, I don't know.

Mr. BROWN:

Q. Can you judge from your knowledge of stock brokers?

Objected to. Objection sustained; exception by counsel for defendants.

Q. Did you order any Chesapeake & Ohio stock sold before the order which you gave upon April 1st 1895, by these defendants?

A. Did I?

119 Q. Did you order these defendants to sell any Chesapeake & Ohio stock on your account before your order upon April 1st, 1895?

A. Before my order upon April 1st 1895——

Q. Yes, to sell it? You said you gave them orders on April 1st 1895 to sell 100 shares?

A. Yes sir.

Q. Had you ever given them any orders before that to sell for your account Chesapeake & Ohio stock?

A. No sir.

Q. Did you ever order sugar stock by them to be sold short?

Mr. PENCE; I object to that.

The COURT: How is it relevant?

Mr. BROWN: I wish to show your honor that Mr. Burke who says he doesn't know what the result would have been of a very plain transaction in Philadelphia, hadn't only ordered stock, as he would now have it made appear, for investment—and sold stock—ordered stock sold, but that he was dealing as other people in stocks, and that he ordered these gentlemen, Crawford & Valentine, to sell sugar stock short, stock that he didn't have at all, that that must have been a pure contractual relation that he entered into with them at that time in relation to that stock. That stock is included in the accounts in the other transactions which are the subject of

investigation here. If Mr. Burke ordered, for instance, 100 shares of sugar stock sold when he did not have and had never bought any stock, knowing that Crawford & Valentine was to buy that
120 in New York—if he did that it must appear that in doing that he was entering not upon what he calls a fiduciary relation with Crawford & Valentine by which they should buy and hold certain property for him, but a business relation with Crawford & Valentine by which so long as he indemnified them they could charge him with commissions for selling and he holding himself ready to deliver the stock if the purchaser called for it; it was a purely contractual relation.

The COURT: Do you contend that if he answered this question affirmatively showing that he had been dealing in stock, that these transactions in sugar stock would change the balance of the account?

Mr. BROWN: I am not expecting to change the figures of the account, what I wish to show is that the transactions between Mr. Burke and Crawford & Valentine, the general transactions—the general run of transactions were such as to show that when he made these orders to buy and sell Metropolitan Traction stock in Philadelphia, he was dealing with them in a purely contractual relation. I think that this throws light upon it because they were transactions at the same time, in the same general course of business, if I can show that he ordered sugar stock sold short there.

Which objection was sustained by the court. To which ruling of the court counsel for defendants then and there duly excepted.

121 The COURT: If he sold any of this stock short it is proper.
Mr. PENCE: He does not claim that your honor.

Mr. BROWN: Now, Mr. Burke, you say that you know that Crawford & Valentine sold your Metropolitan stock in Philadelphia. How do you know when they sold your Metropolitan stock in Philadelphia?

A. Through a personal examination of their books.

Q. Have you their books here?

A. Yes sir.

Q. Will you produce them?

A. I will.

Q. I should like to have you turn to the account by which you know—you may go on and do that now or if you will permit me I will ask you one other question. You say that at a certain time you ordered 300 shares of Metropolitan Traction stock sold. Do you know whether Crawford & Valentine were credited upon the books of Dick Brothers & Company at that time with 300 shares of Metropolitan Traction stock?

A. Yes sir, they were.

Q. And when you say that 200 shares were not yours but theirs, that you had nothing to do with it, how do you know that?

A. From their books.

Q. What do their books show about that, will you point it out?

A. Yes sir. Their books show that on that date they had only 100 shares belonging to me.

Q. How do their books show that?—do their books show
122 your account?

A. The account in Metropolitan Traction stock. They dealt entirely with Dick Brothers & Co. and Toland Bros. & Co. in Metropolitan Traction stock, they dealt nowhere else, with no other persons, they had no other accounts with any other persons in Metropolitan Traction stock. Those accounts show that on the 28th day of January 1895 that they had sold all my Metropolitan Traction stock with the exception of 100 shares.

Q. Why do you say that they had sold your Metropolitan Traction stock?

A. Their books, Mr. Brown, show this——

Q. I know perfectly well what the fact is here. Why do you say that they had sold your Metropolitan Traction stock?

A. Simply because I say their books show it, and I will tell you how they show it if you will allow me.

Q. Go on?

A. Now on the 24th day of October 1894 they were carrying for me 500 shares of Metropolitan Traction stock. On the 24th day of October they sold 100 shares of Metropolitan Traction but not on my order.

Q. Not on your order?

A. They sold that and that stock then—that was in the hands of Dick Brothers & Co., the 500 shares, when they sold the 100 shares the 100 shares were taken out of that, delivered out of that stock, so that Dick Brothers & Co. then held, after the sale of October 24th—held only 400 shares for——

Mr. PENCE: All acounts?

123 A. For Crawford & Valentine. I say that was a sale of my stock, when they sold that stock and delivered 100 shares of the 500 which they had for me that left only 400 for me. Now do you understand that, Mr. Brown?

Mr. BROWN:

Q. I understand it perfectly. We have been all through this, Mr. Burke, in Philadelphia. What you mean is this: That at a certain time Crawford & Valentine without your order ordered Dick Brothers & Company to sell a certain number of shares of Metropolitan Traction stock?

A. Yes sir.

Q. And that they afterwards, within two or three days, ordered Dick Brothers & Company to buy Metropolitan Traction stock also not on your order, do you not?

A. Yes.

Q. And when you ordered them to sell 300 shares of Metropolitan Traction stock they had—Dick Brothers had credited to Crawford & Valentine more than 300 shares?

A. That is right.

Q. Of Metropolitan Traction stock?

A. Yes, but not belonging to me.

Q. Wait a minute. But there was a space of 24 or 48 hours in which Dick Brothers & Co. were not carrying on their books a credit to Crawford & Valentine of but 100 shares of Metropolitan Traction Company stock?

A. A longer space than that—a little longer, I don't know how long.

124 Q. How much longer? It was a day or two wasn't —?

A. Several days.

Q. Now, Mr. Burke, your estimate of your damages here the difference between the amount which you figure, some $12,000 and the amount which the books of Crawford & Valentine which you say are here show they are indebted to you about—something less than $8,000 is due entirely, isn't it, to the fact that you hold that when you ordered those 300 shares sold they didn't have but 100 of your stock to sell?

A. No sir, not exactly, you don't understand it. The difference between what I claim was due me on the 20th of May 1895 and what appeared to be due me on May 20th 1895 from their books is this—accounted for in this way: I claim that I am entitled when they sold my stock—I am entitled to the market price of that stock as one of the measures of damages.

Q. I understand that, Mr. Burke.

A. Now they sold, for instance, on October 24th——

Q. Now stop right here.

Mr. PENCE: I insist he shall finish his answer.

The COURT: Let him go on and explain his theory.

A. When they sold 100 shares of Metropolitan Traction stock on October 24th 1894 and delivered that stock they then had on hand only 400 shares. Now that was without my knowledge or

125 consent. I claim that I am entitled to damages on account of that sale because it was not with my knowledge or consent, it was unknown to me, and the measure of damages I claim to be the market value of that stock at that time which was, we will say, 109¼. Now when on May 20th—when they suspended their books showed—it appeared upon their books that they were carrying for me 550 shares of stock which was closed out by the receiver by simply an entry on the books of that amount of the market price of that stock on that day, which was 95—the market price on that day was 95; the receiver credited me with 95 cents on the dollar and that made for the 550 shares seven thousand five hundred and some odd dollars.

Mr. PENCE:

Q. While they had sold it for a great deal more?

A. When they had appropriated that stock to their own use the stock was of great deal higher market value, that is our theory.

Mr. BROWN: Now you will attend to the question I asked you?

A. I will try to, Mr. Brown.

Q. Wouldn't that difference be almost entirely accounted for by your claim that when you ordered 300 shares of Metropolitan Traction stock sold in Philadelphia and when Crawford & Valentine sold 300 shares in Philadelphia and credited you with the results, you claim they had but 100 to sell and that the 200 shares
126 were their own and repudiated that part of the transaction, wouldn't that largely account for the difference?

A. It would account to some extent.

Q. Several thousand dollars, wouldn't it?

A. I can't say without figuring.

Q. You are not prepared to say it would not make a difference of several thousand dollars?

A. (No answer.)

Recess to 2 o'clock p. m.

Court met at 2 o'clock p. m.

JOHN E. BURKE, on the stand:

Cross examination resumed by Mr. BROWN:

Q. I understood, Mr. Burke, that you said it would show from the books of Crawford & Valentine how it was that you knewn when yourn stock, your particular Metropolitan stock was sold in Philadelphia?

A. Yes sir.

Q. And you have the books here?

A. I have a book here, yes sir, I have the ledger of the defendants I should say.

Q. I will ask you before you look at it to answer me this: Do you know of Crawford & Valentine selling or buying Metropolitan Traction stock upon their own account in Philadelphia?

A. No sir.

127 Q. Never at any time?

A. No sir, I never knew that they had bought or sold a share of Metropolitan Traction stock on their own account until the 20th—after the 20th of May.

Q. I say do you know now?

A. I do.

Q. That they did?

A. I do.

Q. Do you know when they bought or sold Metropolitan?

A. Yes sir.

Q. When?

A. I can take it right from the books.

Q. Wait a minute. You can tell that from the books, can't you?

A. I can tell from the books, yes.

Q. Now did you have a conversation with Mr. Crawford at any

time after he had returned from Philadelphia concerning prospects of Metropolitan Traction stock?

A. I did.

Q. What was that conversation?

A. Sir?

Q. What was that conversation?

A. I don't understand that to be cross examination.

Q. You object to answering it, do you?

A. I sha'n't object unless my attorneys do.

Q. I will ask you then—I should think it was proper cross examination, myself Mr. Burke, but I will call your attention more particularly. Did Mr. Crawford tell you upon returning from Philadelphia that the people in the East and that he himself were feeling bearish about Metropolitan Traction stock?

Objected to.

128 THE COURT: It is not cross examination.

Mr. BROWN: I wish to show, your honor, that Mr. Crawford—leading up to the question which I wish to ask Mr. Burke, whether Mr. Crawford did not tell him that he had sold himself for his own account Metropolitan Traction?

(Question read.)

A. At what time?

Q. At any time after he returned from Philadelphia—had lately returned from Philadelphia?

A. He told me a part of that—a part.

Q. What?

A. I can say yes to a part of your question.

Q. Well, what part?

A. That he felt bearish.

Q. That he felt bearish?

A. That he felt bearish.

Q. Did he advise you then to sell?

A. He did not, sir.

Q. Did he say anything to you about your selling or ordering sold stock?

A. Not a word, sir.

Q. Didn't Mr. Crawford at that time tell you that he himself, or that the firm of Crawford & Valentine had sold Metropolitan—was short of Metropolitan Traction stock in Philadelphia?

A. No sir.

Q. He did not?

A. No sir.

Q. You are sure?

A. I have said it as emphatically as I know how.

Q. Now will you turn to the books, Mr. Burke—first, as I understand you you had never been in possession of any evidence of the ownership of any of this Metropolitan stock yourself per-

129 sonally?

A. In the possession of the ownership?
Q. Of the evidence of ownership of it, I said?
A. Do you mean the certificates of stock?
Q. Yes?
A. No sir, I didn't have them in my manual possession.
Q. And you knew that Crawford & Valentine hadn't them in their manual possession, did you not?
A. I did not, sir.
Q. Didn't you know that the stock had been bought in Philadelphia and carried for the account of Crawford & Valentine there, didn't you say so?
A. That is what I supposed.
Q. You supposed that they hadn't then in their manual possession any stock certificates?
A. Stock belonging to me, I supposed that they didn't have them in their manual possession.
Q. And they could not, in the general course of business, without payment in full of the amount due upon it?
A. That strikes me as argument.
Q. Could they in the general course of business, in the regular course of business which you know about?
A. I don't know what you call general course of business.
Q. In the course of business of stock brokers which you knew of as carried on here in Chicago and Philadelphia—between Chicago and Philadelphia in relation to Metropolitan Traction stock?
130 A. I know that if it was in the possession of their correspondents in Philadelphia that it would not be in their possession, and I knew, or supposed that so far as my dealings with the defendants were concerned that the stock that they had purchased for me through their correspondents remained in Philadelphia.
Q. And that in the regular course of business it would not come in the possession of Crawford & Valentine unless the full value of it was paid to Dick Brothers & Company, did you not?
A. I don't know what you call the regular course of business any more than what I have said.
Q. You had no reason to suppose that it could come in their possession until the full value of it was paid, did you?
A. I didn't believe that it came into their manual possession, I believed that it remained in Philadelphia and therefore I do not see how I would have reason to believe otherwise.
Q. That is not the question?
A. You asked me if I had any reason to believe that it was not——
Q. That it could come, not that it did come, that it could come in their possession, except upon payment of the entire value of it?
A. It might come in their possession without.
Q. I am asking you about the course of business?
A. No. You are asking me what could happen.
Q. I am asking you if you do not know that it could not come

in their possession in the regular course of business until the
131 price of the stock had been paid—the price at which it had been contracted to be bought.

A. Have you reference to the stock which they purchased for me?

Q. Yes, or any other stock?

A. I don't know what the regular course of business was with other stock so far as they were concerned.

Q. Well, that stock purchased for you then?

A. As I stated to you, Mr. Brown, before, I did not expect that that stock was here, I expected that that stock was held—was in the hands of the correspondents of Crawford & Valentine.

Q. For what purpose—why?

A. To hold until they gave orders to have it disposed of, or sent here to be taken up and paid for.

Q. Didn't you understand that in the regular course of business that it could not be sent here until it was paid for?

A. Well, I did not suppose that they would send it here unless it was paid for, or unless Crawford & Valentine should make some arrangement with their correspondents to send it on here without being paid for, which they might possibly do.

Q. You do not understand that to be the regular course of business, do you?

A. Now I don't know what the regular course of business is.

Q. You don't know what the regular course of business is?

132 A. I think I have answered the question.

The COURT: I think he has answered it two or three times.

Mr. BROWN:

Q. Now, Mr. Burke, you knew enough of the regular course of business to know that you could not expect to get that stock in your possession without paying for it, did you?

A. I know that I didn't expect to, what I could expect is another thing.

Q. And you claim that it was held in Philadelphia as collateral to the amount that Crawford & Valentine owed upon it?

A. I supposed it was, yes.

The COURT: There is no credit in this stockbroking business?

A. (No answer.)

Mr. BROWN:

Q. Will you please look into the book that you have—the ledger account, and point out how it is that you know that your stock was sold on a particular day?

A. I turn to the account of Dick Bros. & Co. of Philadelphia with the defendant as it appears upon the defendant's ledger on page 411.

Q. How is that account headed?

A. It is headed, "No. 2. Dick Brothers & Company, Philadelphia, Pennsylvania.

Q. Well go on?

A. I find that on the 2nd—there is an entry on the 2nd
133 day of July 1894 on the righthand side of the page, it says, "By balance $48,290.49." Immediately below that, under the same date the words, "Long 450 Met. Tr." which I understand to be Metropolitan Traction. Under date of August the 25th 1895 I find an entry——

Q. Are there intermediate entries?

A. For Metropolitan Traction it is simply by balance and interest——

Q. Speak a little louder?

A. I am speaking now of Metropolitan stock. I say under date of August 25th 1895 I find an entry on the credit side of the account 5 Metropolitan Traction at 118 amounting to $590.31.

Q. What does that entry mean?

A. As I understand it that entry is the purchase by Dick Brothers & Company for Crawford & Valentine and it is credited by Crawford & Valentine to Dick Brothers & Company. Is that correct, Mr. Crawford?

Mr. BROWN: He is not on the stand.

The WITNESS: Under the date of August 31st 1895 I find an entry of 10 Metropolitan—it is abbreviated here, "Met. Trac." and I will read it, "Metropolitan Traction at 117½, amounting to $1175.63.

Q. What does that mean?

A. I understand that to mean a purchase by the defendants through Dick Brothers & Company and that is a credit of the amount of the 10 shares purchased.

Q. Five or ten?

A. The first was five.

Q. Five shares?

A. Yes, sir, the other was ten shares—first five and
134 then ten.

Q. Are those claimed by you to be your shares?

A. No sir. I knew nothing about them.

Q. Then you don't know upon whose order those were bought?

A. I find from other entries in their books that they were bought for third parties, I think one of the parties was Emma F. Prentiss, I don't know whether both, I know one of them—I think so.

Q. Can you turn to that?

A. I haven't got their books here.

Q. Haven't you got their ledger account here?

A. Yes sir, I think so. I find that the five shares purchased on August the 25th was purchased for Emma F. or Emma J. or T. Prentiss as shown on page 47 of the defendants' cash book.

Q. Do you find anything ten shares?

A. I find on page 52 of the defendants' cash book that the ten shares purchased on August 31st was purchased for Emma F. Prentiss.

Q. How do you find they were purchased for Emma F. Prentiss, how do you make that out?

A. Because it is charged to her.

Q. What is charged to her, the stocks?
A. These stocks are charged to her on that day.
Q. On the cash book?
A. On the cash book and in her account on the ledger.
135 Q. You haven't shown her account on the ledger but I will admit that that is so shown?
A. Yes.
Q. Go on—I guess you better refer to the page of the ledger?
Mr. MORAN: He has.
Mr. PENCE: He gave the page of the ledger—he gave the page of the ledger when he first commenced speaking.
Mr. BROWN: Not the page of the Prentiss account.
The WITNESS: On page 516, Emma F. Prentiss' account with the defendants.
Q. Page 516 of the ledger?
A. On ledger page 516 in Emma F. Prentiss' account with the defendants I find that she is charged on August the 25th 1894 with 5 Metropolitan Traction at 118 making $592, and on the 31st day of August she is charged with ten shares of Metropolitan Traction at 117½ amounting to $1177.50.
Q. Isn't it just as well to refer from one page in the ledger to another without bringing in the cash book, wouldn't that show just as well?
A. I could not have told from the——
Q. No matter. I just wanted to save time?
A. Well I will make — as short as I can.
The COURT: You are through with those two items?
Mr. BROWN: With those two items. Now go on?
A. The next entry in the account of Dick Brothers & Company with the defendants is on September 10th 1894 showing a
136 purchase by Dick Brothers of ten shares of Metropolitan Traction at 118—the next entry that I find in the account of Dick Brothers & Company with the defendants is on September 10th, 1894.
Q. 1894?
A. Yes sir, which shows 15 shares Metropolitan Traction shipped, and the next entry——
Q. What does that refer to the Prentiss stock—is it shown on the ledger account of Mrs. Prentiss?
A. I will have to look at that.
Q. Won't you look at it?
A. (Witness refers to book.) I find in defendants' ledger in the account of Emma F. Prentiss that that stock was delivered on September the 1st and September the 8th.
Q. To Mrs. Prentiss, the ledger account would seem to show?
A. The ledger account would show that, yes.
Q. Go on?
A. On September 10th 1894 the account of Dick Bros. & Co. shows that they purchased ten—no, shipped—they were shipped that day, ten shares—the first was five, I think it was fifteen.

Q. It is fifteen. They purchased ten didn't they on September 10th?

A. They purchased ten on September 10th at 118, $1,180.62, and——

Q. Shipped it——

A. No.

Q. Dick Bros. & Co. purchased it for Crawford & Valentine?

A. Yes sir.

137 Q. And shipped it on the same day?

A. (No answer.)

The COURT: What does "shipped mean" the delivery of the stock.

Mr. BROWN: Send the certificates right here.

The WITNESS: The cash book also shows that Emma Prentiss was charged with 10 Metropolitan Traction stock on September 10th.

Q. Paid for it and it was delivered to her, that is what it shows?

A. The account shows for itself so far as payment is concerned. I do not see any payment here. When it was delivered to her I suppose she was charged with it—or when she purchased it she was charged with it.

Q. When it was delivered to her?

A. Well, there is——

Q. This is the account of Dick Brothers with Crawford & Valentine. It charges the stock to Crawford & Valentine——

A. Now the next item relating to Metropolitan Traction stock in the account of Dick Brothers with the defendant was on September 28th, which shows on that date Dick Bros. & Co. purchased 50 shares of Metropolitan Traction stock at 116½ amounting to $5,828.13.

Q. Now do you know how that stock came to be purchased?

A. Yes sir.

Q. How was it?

A. I gave an order to have it purchased.

Q. Will you turn to your account in that book?

A. Yes sir. (Witness refers to book.)

138 Q. On what page of that ledger is your account?

A. It commences on page 526.

Q. What other page is it continued to?

A. 585. In the account of John E. Burke the plaintiff in this case with the defendants, it is shown under the date of September 28th that there were 50 shares Metropolitan Traction stock purchased at 116½?

Mr. MORAN: That is in the defendants' ledger, what page, mention the page to save time?

A. I have, I said page 526 of the defendants' ledger.

Q. Of the defendants' ledger?

A. Yes sir.

Mr. BROWN:

Q. And you gave an order that day to purchase that?
A. I did, sir.
Q. Go on?
A. My impression is that I had an order in for some little time previous to that to purchase it when the stock reached that point. The account then—my account then showed that I had 500 shares of Metropolitan Traction stock with these defendants.
Q. How did it show that?
A. They received from Valentine & McAvoy 450 shares and the purchased 50 shares more for me and that would make 500 shares.
Q. Wouldn't that make 550?
A. No sir, I didn't say 550, I said 500. The next entry in
139 Dick Bros. account with the defendant in Metropolitan Traction stock is on the 24th day of October 1894, which shows that they sold 100 shares of Metropolitan Traction stock for 109¼ making $10,918.75.
Q. That means that Dick Bros. & Co. sold for Crawford & Valentine, does it?
A. Yes sir, I suppose so.
Q. Did you give them an order to sell at that time?
A. No sir.
Q. Do you say that upon that day they sold your stock?
A. I do, sir.
Q. Can you trace in this ledger any other entry concerning that stock?
A. Concerning this stock, concerning the 100 shares of Metropolitan Traction; you first asked me how I know that that was my stock?
Q. Yes?
A. Well, I know it because it was stock sold and delivered by Dick Brothers & Co. upon the order of the defendants, the defendants had 500 shares of stock with Dick Bros. & Co. upon that day belonging to me. They sold on October 24th 100 shares out of that 500 and delivered it.
Q. How do you know it was out of that 500?
A. Because it is in the book on your account which you kept—which the defendants kept with Dick Brothers & Company which shows that that 100 shares was taken out of the 500.
Q. How does it show that it was taken out of the 500?
140 A. Because afterwards you purchased on the 29th but not on my order 100 shares of Metropolitan Traction stock and then the balance which you had on hand on October 29th, according to your own books was only 500, therefore I say that the 100 shares which you sold on the 24th came out of the 500 and 100 was afterwards purchased on October 29th and after that purchase your account with Dick Bros. & Co. still showed that you only had 500 shares on hand.

Q. What reference is there under this date of October 24th in this ledger——

Mr. MORAN: To save time Mr. Brown—do you say Mr. Burke, that 100 shares sold at that date shows that it was delivered?

A. I say the account shows that it was taken out of the account.

Mr. BROWN: It doesn't show delivery at all.

The WITNESS: It shows that it was taken out of the account.

The COURT: It means that it was credited to the Chicago firm and charged up against the other, is that it?

Mr. BROWN: Yes.

Q. What is there in the ledger with reference to that entry "100 Metropolitan Traction 109¼."

The COURT: Say who that was charged up to.

A. That is on page 101 of the cash book.

141 The COURT:

Q. Who is that charged to?

Mr. BROWN: To Crawford & Valentine.

A. It was for your friend, Joe Wilkins, secretary of the stock exchange.

Mr. BROWN: There is no use of laughing about it.

The COURT: Joseph Wilkins?

A. J. R. Wilkins. That sale is credited to J. R. Wilkins on page 101 of the defendant's cash book.

Mr. BROWN:

Q. Will you now look at J. R. Wilkins' ledger account?

A. Oh yes, sir, (witness refers to book).

Mr. MORAN: What is that?

Mr. BROWN: 100 shares recorded sold short.

Mr. MORAN: That is what you say.

Mr. BROWN: That is the fact. Wilkins was a customer of Crawford and Valentine and ordered 100 shares of Metropolitan Traction sold short and it was sold short and bought in on October 29th and Mr. Burke makes $5000 out of the transaction he claims, that is the idea.

The WITNESS: Well if I were not a witness I could answer you. I find an entry in the account which now stands on the ledger James R. Watkins——

Mr. BROWN: Now it can be proven that when these books left Crawford & Valentine's hands and went into the hands of the receiver, the title & trust company, this account stood in the name of Joseph R. Wilkins. A little pen mark has been made
142 over the "i" in each case, which Mr. Crawford & Valentine, neither of them knew anything about. I do not think anybody disputes that. Will you admit that, or will we be obliged to prove it? Mr. Burke very naturally and justifiably, when these books were produced in the bankruptcy proceedings, supposed that there was something wrong, but it was just as much a surprise to

Crawford & Valentine as to anybody else, and it was to prove beyond all doubt that it was done by somebody in the Chicago Title & Trust Company.

Mr. MORAN: What difference does it make?

Mr. BROWN: It makes a good deal of difference because this was not their stock.

Mr. PENCE: You sold our stock and delivered it.

Mr. BROWN: We didn't deliver it.

Mr. PENCE: Well, you sold it.

Mr. BROWN: They sold short for Wilkins; they were not doing business alone for Burke.

The WITNESS: Now what is the question?

Q. You were just about——

Mr. MORAN: The general question is to show from the ledger how you know that they sold your stock.

Mr. BROWN: I am now asking you what you find in the ledger account which now stands in James R. Watkins?

A. Then you have abandoned the other question.

Q. No, in relation to 100 shares of stock which you have
143 just spoken of in connection with the cash book being sold on the 24th of October, what do you find there?

A. I find a credit entry on the defendant's ledger in the account as it now stands upon the ledger, of James R. Watkins on page 478, 100 shares of Metropolitan Traction at 109¼.

Q. What would that indicate?

A. It would indicate that they sold that stock for him.

Q. Exactly, now turn back to the Dick Brothers & Company?

A. I can't handle this book here.

Q. Turn back to Dick Bros. & Co.? the next transaction?

A. Just wait a moment, put your question and I will answer it.

Q. What is the next transaction after October 24th?

A. In Metropolitan Traction stock?

Q. In Metropolitan Traction Company stock?

A. Between Dick Bros. & Co. and the defendant?

Q. Yes, what is it?

A. The next transaction in Metropolitan Traction stock between the defendants and Dick Brothers & Company as appears upon the defendants' ledger is under date of October 29th 1895—1894, where Dick Brothers are credited with 100 shares of Metropolitan Traction at 109 amounting to $10,906.25.

Q. What would that indicate?

A. It would indicate that they had purchased for Crawford & Valentine that amount of stock on that day.

Q. And to what other entry in the ledger or cash book
144 does that refer?

A. It refers to the cash book page 105.

Q. Will you turn to that?

A. (Witness refers to book.) Now what is your question?

Q. Do you find that it refers to the Metropolitan Traction stock?

A. I find that on page 105 of the cash book—it is the cash book,

an entry of the purchase of 100 Metropolitan Traction stock for J. R. Wilkins.

Q. At 109?

A. 109.

Q. Does that refer to the ledger entry?

A. It does.

Q. What page?

A. A. 478. Now what?

Q. What entry do you find there—what page—what account is that?

A. Do you mean what corresponding entry?

Q. In the first place what account is page 478?

A. It is now in the names of James R. Watkins.

Q. What corresponding entry do you find?

A. In that account I find that under date of October 29th 1894 a charge for the purchase of 100 shares of Metropolitan Traction at 109.

Q. What would that indicate?

A. It would indicate that they had purchased for this party that number of shares.

Q. Don't all these entries concerning this 100 shares of the Metropolitan Traction in the ledger and in the cash book indicate that on October 24 Mr. Joseph R. Wilkins ordered Crawford & 145 Valentine to sell 100 shares of Metropolitan Traction short and upon the 29th of October ordered them to buy it in?

A. I can only state what I have already stated with reference to what the books show.

Q. You can't answer that question?

A. But it would indicate to my mind exactly what you have stated.

Q. Now, Mr. Burke, what date was that?

A. October 29th.

Q. At what?

A. 109. October 29th at 109¼.

Q. Now a considerable portion of the claim which you make is based on the further claim of yours that the 100 shares sold on the 24th of October were your shares and were sold at 109¼, isn't it?

A. Yes sir.

Q. A considerable portion of the claim because you—that is a larger price than was obtained when you ordered 300 shares sold, or any shares, isn't it—how much were the 300 shares sold at?

A. (No answer).

Q. How much was the 100 shares that you claim sold for?

A. 90⅛.

Mr. MORAN: He has not answered the question, he hasn't mentioned all the entries on that page.

Mr. BROWN: No, I am going on, I stopped right there to inquire about that.

Q. If you are to be credited with 109¼ for those 100 shares

of stock instead of 90⅛ as you are in the ledger account with
146 you in the books of the defendant-, you are entitled to just that much more than their books show now?

A. It seems to me that that goes without saying.

Q. Now go on. On October 29th is an entry here——

A. I prefer to state.

Q. I am cross examining?

A. You want me to state how I know and I am trying to do it if you will allow me.

Mr. BROWN: Now go on?

A. The next entry that I find in the account of defendants with Dick Bros. & Company with reference to Metropolitan Traction stock is under date of October 29th, it says balance 500 Metropolitan Traction $31,028.26.

Mr. BROWN: That does not show any transaction.

A. It shows the amount that they then had on hand for the defendants.

Q. In giving these transactions from the account of Dick Bros. & Company heretofore you have not mentioned the items of balance which was shown from time to time, have you?

The COURT: The balance of stock on hand.

Mr. BROWN: Balance of stock on hand, I would just as leave you would say it, only I want to show that you haven't followed that course heretofore?

A. On September—excuse me—on September the account of Dick Brothers & Company with the defendants shows——

Mr. PENCE: September when?

A. On the account of the defendants with Dick Brothers &
147 Company as shown by the defendants' ledger, it appears that on September the 29th they had a balance, Dick Brothers & Company had a balance of 500 shares of Metropolitan Traction stock on hand for the defendants.

Q. And upon August 31st what does it show?

A. The balance that they had on hand is not stated.

Q. It says "balance" don't it?

A. Balance, 15 Metropolitan——

Mr. BROWN: I think that is a mistake because the amount carried out you see——

The WITNESS. I think it is a mistake.

Q. Go on with the next transaction after October 29th as shown by these books?

A. In answer to this question of how I know that they sold my stock and when they sold it, I will say that the entry upon their books showing that they had in the hands of Dick Brothers & Company on October 29th 500 shares of Metropolitan Traction, that that was the number of shares they had on hand, and the fact that they purchased—the defendants purchased through Dick Bros. & Co. 100 shares on October 29th indicates, I think, very clearly that the 100

shares which they sold on October 24th they sold from my stock. It was taken out of—the account shows that it was taken out of the 500 shares which they then had on hand for the defendants.

Q. That is a matter of argument isn't it?

148 A. It is a matter that appears on the books.

Mr. MORAN: Inference.

Mr. BROWN: Inference! I should think so.

Q. Didn't you answer me this morning that you didn't know what the effect would be on the account between Crawford & Valentine and Dick Brothers & Company if persons ordered purchases from Crawford & Valentine and sales from Crawford & Valentine on the same day.

The COURT: The same hour of the same day?

Mr. BROWN: You said you didn't know what the effect of that would be?

A. I did — the course of business.

The COURT: The court will conclude that there would be practically the same charge on each side of the ledger.

Mr. BROWN:

Q. Do you know what the effect would be upon the account of Crawford & Valentine and Dick Brothers & Company provided that Crawford & Valentine had at the request of a customer ordered Dick Brothers & Company to purchase on the 24th of October, say 500 shares of a particular stock, and some other customer had ordered them upon the 29th of October to sell 500 shares short, and both orders had been carried out, do you know what the result would have been upon the account between Crawford & Valentine and Dick Brothers & Company?

149 A. As you state it I do not. I can explain if you wish my answer.

Q. I should like to have it?

A. My understand- is this: If Crawford & Valentine received from one customer an order to purchase 500 shares of a certain kind of stock—sent the order to their correspondent in New York or Philadelphia to purchase 500 shares of stock, and another customer at the same time——

Q. Or later?

A. Or later—well, on the same day, or substantially at the same time, gave an order to sell 500 shares of the same stock through the same brokers, if the first order—I understand the first order would be a purchase and that the brokers would purchase the stock if the second order to sell—if it was to be sold short they would sell that short but still hold the stock that they had purchased for the first customer.

Q. I am asking you what the account between Crawford & Valentine and Dick Brothers & Company would show upon the ledger of the two concerns?

A. I don't know. I don't know how they might keep their books in that respect.

Mr. PENCE: There is no such instance in the books anyway.

Mr. BROWN:

Q. Suppose the order for the sale was five days after the order for the purchase, would that make any difference, supposing that
150 the order for the sale was from another customer and was for a short sale?

A. If five days afterwards a customer gave an order for the sale of 500 shares of stock short and it was sent to the same broker my understanding is that it would be sold short and it would appear in the account between the parties as a short sale, if that was the instruction to the broker who finally executed the order, but that if the order was given by Crawford & Valentine to sell 500 shares of stock without reference to whether it was short or long, that the broker in New York or Philadelphia would understand that it was not a short sale and that he would sell the 500 shares of stock which he had purchased—which they had purchased five days previous to that time and that would wipe out that stock, that would be the end of it, there would be no more of that stock held by the broker. Now that is my understanding of it.

Q. Now go on with the next transaction, the next item?

A. Now the next item that I find from the account of Dick Brothers & Company with Crawford & Valentine is under date of December 31st, balance 500 Metropolitan Traction stock, on the credit side of the ledger.

Q. What does that indicate?

A. That indicates that Dick Brothers & Company were holding and carrying 500 shares of Metropolitan Traction stock for the defendants.

151 Q. Let me ask you between each month on this page, or at the end of each month the ledger account is balanced, isn't it?

A. Well, the account shows itself how it is balanced.

Q. The account is balanced, isn't it at the end of each month?

A. I can tell you just when it shows.

Q. Here it is Mr Burke?

A. Well, here on August 31st it seems to be balanced and on September 29th it seems to be balanced.

Q. On July 31st?

A. On July 31st it seems to be balanced, October 29th it seems to be balanced, that is not at the end of the month. You asked me at the end of the month. I can't read this here (indicating).

Q. When you say there was an entry December 31st, that is after the account is balanced and the new section opened, isn't it?

A. It is the commencement of the account for December as I understand it—no, for January.

Mr. MORAN: For January?

A. January. The next item that I find in this account of Dick

Brothers & Company with the defendants is under date of January 10th 1895, which shows a purchase of 200 shares of Metropolitan Traction at 100⅜ amounting to $20,137.50, and on the 11th——

Mr. BROWN: Let me ask you right there. Did you give an order to purchase Metropolitan Traction stock at that time?

A. No sir.

152 Q. What does that refer to, if anything, what page of the ledger?

A. There is no reference to any page of the cash book or ledger.

Q. Have you in your examination of these books found a corresponding entry upon this ledger to that entry of January 10th, 200 Metropolitan Traction at 100⅜?

A. I find an entry here.

Q. Where?

A. I find entries on January the 10th of the—did I say that was a purchase? That was a sale.

Q. I thought you were wrong?

A. That was a sale—that was a sale on January 10th.

Q. I thought you were wrong. Then the transaction that you spoke of last is as you find in the account of Dick Bros. & Co. on the ledger of the defendants, a sale of 200 shares of Metropolitan Traction at 100⅜ on January 10th for $20,137.50, is it?

A. I said that exactly.

Q. Have you found a corresponding entry in the ledger in relation to that under that date?

A. I have no reference—there is no reference here to any other account or any other book. I find in other accounts—in accounts in the ledger of a sale of 200 Metropolitan Traction on January 10th.

Q. Will you point that out to me?

153 Mr. MORAN: Let him get at the books if you want him to tell.

A. I find on page 166 of the cash book a sale of 200 shares of Metropolitan at 103 and a quarter and a charge——

Q. No, not a- 103 and a quarter?

A. One hundred and three quarters which is charged to D. B. & Company?

Mr. BROWN: Do you find the ledger account of that mentioned?

A. Ledger account 411.

Q. Look at it. Have you in your examination of the books, Mr. Burke, found in the ledger another entry on the other side under date of January 10th of 200 Metropolitan Traction at one hundred and three quarters, under stock and bonds for Crawford and Valentine or R. C. Crawford or any such account?

A. I have.

Q. Where?

A. I find in the account of R. C. Crawford, his New York account on page 225, I find an entry under date of January 8th of a sale—of a credit to him on a sale of 200 Metropolitan Traction of one hundred and three quarters.

Q. If an order was given by mail upon the 8th that would be about the time it was executed in Philadelphia, would it?

A. Well, that is——

Q. That is what you find do you?

A. I said so.

Q. What does it indicate upon the face of it.

A. It indicated that R. C. Crawford sold on that date——

Q. Crawford and Valentine sold for R. C. Crawford, isn't
154 that what it indicates?

A. It indicates that there was a sale for R. C. Crawford account of 200 shares of Metropolitan Traction, just as it states there.

Q. Go on and give the next item, about Metropolitan Traction? You have given that before, now I would like to call your attention to the next item. I will ask you whether that sale of 200 shares of Metropolitan stock, January 10th was ordered by you, whether it was a sale ordered by you?

A. It was not.

Q. When did you give the order for the sale of three hundred shares?

A. On January 28th, 1895?

Q. What is the next item?

A. The next item in the account of Dick Brothers & Company with the defendants is under date of Jan. 11, 1895 Two hundred shares of Metropolitan Traction, sold at one hundred and a half, $20,287.50.

Q. That indicates what?

A. That indicates that that amount of stock was sold on that day I suppose?

Q. And by Dick Brothers for Crawford and Valentine?

A. That is what it indicates as I understand it.

Q. Do you find a corresponding entry to that in the ledger account?

A. There is nothing to indicate in this account here, it does not refer to any other account.

Q. In your examination of the books you have found a similar entry have you not about that day?

A. Yes, sir.

Q. Where is it?

155 A. I find it both in the cash book and in the account of R. C. Crawford.

Q. What do you find in the account of R. C. Crawford.

A. In the account of R. C. Crawford, the New York account, I find an entry under date of January 11th 1895, credit 200 Metropolitan Traction stock, sold at one hundred and one and a half, $20,275.00.

Q. That would indicate that there was a sale for the account of R. C. Crawford for that amount of stock by Dick Brothers and Company or there was a sale in New York for that amount of stock——

A. No, not in New York.

Q. There was a sale of that amount of stock for R. C. Crawford by Crawford and Valentine wasn't there?

A. That would be my inference.

Q. Go on to the next item of Dick Brothers and Company. I will call your attention to the items of dividends.

A. The next entry referred to in the account of Dick Brothers and Company with the defendants is under date of January 16th which shows that there are—that Dick Brothers and Company are charged with a dividend of one quarter per cent. on 500 shares of the Metropolitan stock amounting to $625.00.

Q. That would mean that Dick Brothers and Company credited Crawford and Valentine with that amount, or that Crawford & Valentine at any rate charged Dick Brothers with that amount would it?

156 A. That is the way I look at it.

—. Could they charge Dick Brothers and Company with a dividend.

A. They charged Dick Bros. & Co. with a dividend.

Q. Now is there a cash book reference there,

A. No, sir.

Q. Will you look at the cash book and see if that is credited to you, or do you know—can you answer whether that is credited to you in your account, $625.00?

The COURT: What is the date?

Mr. BROWN: January 16th.

The COURT: J. E. Burke dividends a cent and a quarter on five hundred, six hundred and twenty five dollars.

Mr. MORAN: What is the page of the ledger.

The COURT: 585 is the page.

Mr. BROWN: That dividend which you say you were credited with which you should not have been?

A. We will come to all that. Under date of January 17th in the plaintiff's account in this case the plaintiff is credited with dividend of one and a quarter on five hundred Metropolitan Traction of $625.00

Q. What is the next item?

A. The next item in the account of Dick Brothers and Company with the defendants is under date of January 25th 1895.

Q. There are three entries under that date, are there not?

A. Of purchase—I mean of a purchase of three hundred and fifty shares of Metropolitan Traction stock, the first 150 purchased

157 at 98 the second 150 purchased at 97, the third or fifty at 96.

Q. Did that indicate that Dick Brothers and Company purchased for Crawford and Valentine three hundred and fifty shares on that date?

A. That is what I would understand from the aaccount.

Q. Is there any other corresponding entry to that in the ledger account, in the ledger account in these books?

A. I find in the account of R. C. Crawford——

Q. New York account?

A. New York account, under date of January 25th, 1895 a charg-

to him for the purchase of 350 shares of Metropolitan Traction stock.

Q. At the same prices?

A. Yes sir, that is right, at the same prices.

Q. What is the next item—you say that you did not order these 200 shares sold upon January 11th, nor did you order any shares bought on January 25th or about that time.

A. No sir.

Q. Those transaction- were under no order or instructions from you?

A. They were not on any order or instructions from me. The next item relating to Metropolitan Traction stock in the account of the defendants with Dick Brothers and Company is under date of January 26, which is showing a purchase—showing a sale of fifty shares of Metropolitan Traction at 94 and a quarter amounting to $4,709.37.

Q. Is there a sale on that same day?

158 A. There is another entry under same date of fifty Metropolitan Traction D. B. & Company, forty seven hundred dollars.

Q. What does that indicate?

A. That indicates to me that 50 shares were delivered by Dick Brothers and Company to Toland Bros. & Co. on that day.

Q. Did you find entries, corresponding entries or entries concerning Metropolitan Traction in this ledger account anywhere else upon this day corresponding to them?

A. Yes sir, I find in the account of Toland Brothers and Company of Philadelphia with the defendant company as appears upon the defendant's ledgers here, on page 416. I find under date of January 16 with To. and Brothers—January——

Q. January 26th?

A. I mean January 26th, an entry of 50 Metropolitan Traction stock, D. B. & Company $4700.

Q. Which do you refer that refers to, or which entry does that correspond with?

A. I find on the debtor side of that account under date of January 26th 50 Metropolitan Traction at ninety four and a quarter.

Q. What do those two items indicate upon their face.

A. It -ould indicate that they received—that Toland Brothers & Company received on the order of the defendants 50 shares of Metropolitan stock from Dick Brothers and Company at—at 94 and on the same day they *d* sold that fifty shares of Metropolitan Traction stock and aat 94 and a quarter.

Q. Which of the items does it correspond with in the ac-

159 count of Dick Brothers & Company.

A. As I have already said there is an entry in the account of Dick Brothers & Company under date of January 26th of 50 Metropolitan stock delivered to Toland Brothers and Company.

Q. That is right but you haven't stated whether you found an entry—a further entry which corresponds with this other purchase—

or sale of 50 of the Metropolitan Traction at 94 and a quarter on the same date.

A. I find an account of Dick Brothers and Company that on that date—in the account of Toland Brothers and Company with the defendants upon that day—on the 26th—on January 26th, Toland Brothers and Co., received from Dick Bros., and Co., on the order of the defendants, 50 shares of Metropolitan Traction at 94 and on the same d-y they sold the fifty shares at 94 and a quarter. Now those are the only transaction- on that day that was had with Toland Brothers and Company.

Q. But that does not refers then to this first item of the sale of 50 Metropolitan Traction at 94 and ¼, it refers to the second item which you read?

A. I understand Dick Bros. and Co., are charged on that day on the defendants' cash book with fi*fit* shares of Metropolitan Traction., at 94 and a quarter, that was the sale made by Toland Brothers and Company.

Q. Is not there a charge in R. C. Crawford's New York account showing a purchase?

160 A. You better let me go on and give them in their order.

Q. I am referring to this, R. C. Crawford's account, this is not Dick Bros. account I am referring to?

A. Don't mix the two accounts up.

Q. I haven't mixed them up. I am asking you if there is not a corresponding entry here of January 26th.

A. I can't say that there is a corresponding entry.

Q. But there is an entry?

A. I can say that there is an entry and the books show it.

Q. What is the entry?

A. There is an entry in R. C. Crawdorf's New York account on page 225 of—under date of January 26th a credit for the sale of 100 shares of Metropolitan Traction at 94 and a quarter.

Q. Indicating on the face that Crawford and Valentine sold for R. C. Crawford that amount on that day?

A. That is the way it would indicate to me.

Mr. MORAN: R. C. Crawford, the defendant here.

A. He is one of the defendants.

Mr. BROWN: Certainly he is one of the defendants.

The WITNESS: Now the next item relating to Metropolitan stock in the account of Dick Brothers and Company with the defendants is under date of January 28th, I find an entry of a sale of 300 shares of Metropolitan Traction at 90 and ⅛ amount to $27018.75.

The COURT: That is on your order?

A. That is when I ordere*f* it, that is the day*e* I gave the order to sell 300 shares.

Mr. BROWN: Mr. Burke claims that only 100 of those that

161 were sold were his?

A. That is right.

Mr. BROWN: It is perfectly understood between us but the account shows that 300 shares were sold at that date of Metropolitan stock.

The WITNESS: Yes, the account shows it, I said that.

Q. Now will you look at the entry in your account under January 28th, or will you state if that is credited to you in your account with Crawford and Valentine upon January 28th?

A. Yes sir it is.

Mr. VROOMAN: Let us get that account.

Mr. BROWN: He has put it in here several times.

Mr. MORAN: He says it is credited to him.

The WITNESS: There is no question about it. Now the next item——

Mr. BROWN: Where is your account in this ledger, what page?

Mr. MORAN: 585 isn't it?

Mr. BROWN: 585.

The COURT: 526 and 585.

The WITNESS: 585 is the last.

Mr. BROWN: You find in that account a credit of that item?

A. I find under date of January 28th a credit of the sale of three hundred shares. of Metropolitan Traction at 90⅛ amounting to $27,000. credit to my account.

Q. That was about the lowest point that the Metropolitan
162 Traction reached, was it?

A. Yes sir.

Q. It was lower considerably than the amount at which the stock was sold which is charged in this ledger account of R. C. Crawford's New York account as having been sold upon the prior dates in January, wasn't it?

A. Your question is a little involved for me to answer.

Q. The accounts of sales for the account of R. C. Crawford's New York account upon January 10th, 11th, and 26th,——

Mr. PENCE: The testimony already shows that.

Mr. BROWN: Are at higher figures are they not, than the sales——

Mr. MORAN: He has given the figures, Mr. Brown.

The WITNESS: Under date—the next item in the account of Dick Brothers and Company with the defendants as appears on the ledger is under date of February 4th, in which it appears that there was a sale of fifty shares of Metropolitan stock at one hundred and a sale of fifty shares of Metropolitan Traction stock at 99.

Mr. MORAN: You said a sale in both instances?

A. A purchase and sale of 50 shares upon that day.

Mr. VROOMAN: Febriary 4th or February 2nd?

A. February 4th as it appears on this date—as it appears on this ledger.

Mr. BROWN: A purchase at 99 and a sale at a 100?

A. Yes sir.

163 Q. Are there any other items in the ledger referring to the purchase and sale of 50 shares of Metropolitan Traction stock on that day?

A. I find on the cashbook of the defendants at page 181 a purchase of 50 shares of Metropolitan Traction at 99, and on the same

date a sale as appears by the cash book of fifty shares of Metropolitan stock at the same figure.

Mr. VRONAM: That sale is at a hundred isn't it?

Mr. BROWN: In what ledger account does it show?

A. It shows in the ledger account of stocks and bonds, of the defendant's ledger, page 394.

Q. '94 or '92?

A. 394 the stock and bond account commences on 392 and it is on 394, a purchase of fifty shares of Metropolitan Traction at 99, and on the credit side of the account I find a sale of 100 Metropolitan Traction stock at one hundred and a quarter and fifty Metropolitan Traction at 100.

Q. Now what does that indicate on the face of it?

A. It indicates that the stock which I have just mentioned was bought and sold as it appears here upon the account.

Q. For the account of?

A. For the account of stocks and bonds.

Q. What does that indicate, stocks and bonds?

A. I understand stocks and bond represented Crawford and Valentine?

164 Q. It could not be anybody else?

A. House account.

Q. It is house account?

A. Yes sir.

Q. You made no order for sale of stock that day?

A. No, sir. The next item relating to Metropolitan Traction in the account of Dick Brothers and Company with the defendant is on March the 13th 1895 wh-ch shows——

Q. Sale, isn't it?

A. A sale of fifty Metropolitan Traction at 96 and three quarters.

Q. Do you find a corresponding ledger entry to that account?

A. There is nothing here to show it.

Q. There is nothing to show it there, but have you found one?

A. Under that date?

Q. Do you find any entry under that date?

A. Of that fifty shares, I do not know.

Q. Do you find any entry of sale?

A. I find in the cash book an entry on page 204 of a sale of fifty shares of Metropolitan at 96 and three quarters.

Mr. MORAN: What is the date, Mr. Burke?

A. March 13th.

Mr. BROWN: To what ledger account does that refer?

Mr. MORAN: That was a sale.

Mr. BROWN: Yes, that was a sale.

A. That refers to a sale ledger account 204, Dick Brothers and Company.

Q. Dies it refer to the R. C. Crawford New York account?

A. Well, I can't go through with these books with these gentlemen here. I must have access to the books so when a question is asked——

165 The COURT: Go on with another question.

Mr. BROWN: Will you look at the cash book and see if there is a reference to the ledger page?

A. Of that fifty shares?

Q. Any number of shares on that day.

A. I find in the cash book on the debtor side page 204, under date of March 13th, an entry R. C. Crawford, 400 shares "Metropolitan, 96 and three quarters."

Mr. BROMAN: How many shares?

A. Four hundred shares.

Mr. BROWN:

Q. Does that refer to R. C. Crawford's New York account where the corresponding entry is found?

A. I will have to look.

A. (Witness examines book.) I find in R. C Crawford's New York account, at page 226 under date of March the 12th an entry on credit side of account 400 shares of Metropolitan Traction, 96 and ¾.

Q. Will you look at Toland Brothers' account in the ledger and see if there is 350 shares mentioned under that date?

A. I find the account of Toland Brothers and Company with the defendants on page 416 under date of March 13th, on the debit side of the account an entry of 350 shares of Metropolitan Traction 96 and ¾.

Q. What would that indicate upon its face, you say it is upon the debit side?

A. It would indicate that that amount of stock was sold by
166 Toland Brothers and Company on that day for the defendants.

Q. Crawford and Velentine.

A. Crawford and Valentine are these defendants, I suppose.

Q. Go on, what is the next item of Dick Brothers and Company?

A. I think the court will have to let me off pretty quick, I am so tired. I am exhausted physically.

The COURT: What the books show, can't you have some one else put on the stand, you are simply asking the witness what the books show. Suppose Mr. Pence take your place and Mr. Brown asks him what the books show.

The WITNESS: The books show for themselves.

Mr. MORAN: You have but a few more items.

The COURT: How many have you?

Mr. MORAN: Two or three.

The COURT: Why not have Mr. Brown read from the books what he wants in the record? Is there any objection to that Mr. Burke?

Mr. BURKE: No.

The COURT: That will relieve you.

The WITNESS: I don't want his comments. The last was March 13. On April the 16th 1895, as it appears on page 412 of the ledger, account of defendants with Dick Brothers and Company, there is an

entry on the debit side of the account of 100 Metropolitan Traction at 89 and ½.

Q. That means there was a sale doesn't it?

167 A. No sir—yes that we're charged with that, that was a sale, it is on the debit side of their account.

Q. It would indicate that there was a sale.

A. When I say it is on the debit side of Dick Brother- and Company's account, that would be a charge of course to them.

Q. What corresponding entries do you find there?

A. Do you mean in anybody's account?

Q. Yes?

A. I find on the cash book under date of April 16th on the credit side of the cash book an entry R. C. Crawford—hold on—I find on the debit side of the cash book, 225, an entry R. C. Crawford, 100 Metropolitan Traction at 89 and ½.

Q. Is there a ledger account in there corresponding with that, in R. C. Crawford's account?

A. I find in the account of R. C. Crawford, New York account, with the defendants, on the credit side of his account under date of April 16th 1895, the sale of 100 Metropolitan Traction at 89 and ½.

Q. Are there any other items in the Dick Brothers' account?

A. On April—under date of April 17th I find an entry on the debit side of Dick Brothers' account with the defendants "Dividend on 100 Metropolitan Traction, $125.00."

Q. When was the next one?

A. It shows as I understand it that the defendants received—the defendants charged Dick Brothers and Company with that amount of dividend on that day.

168 Q. Was there any further item?

A. No, sir.

Q. Now all those items in the Dick Brothers & Company account are intermingled with various items concerning other stocks are they not, you only picked out the Metropolitan Traction transactions?

A. There are other stocks in the account besides.

Q. Upon both sides of the account?

A. Yes.

Q. You have said that you could tell from the books that you could tell how it was that you knew it was your stock that was sold?

A. Yes sir.

Q. And you claim that these items which you have given from the books so show?

A. I claim that the items I have given from the books and the accounts as they appear here in full do show that.

The COURT: You haven't any knowledge of these matters except as disclosed from the books.

A. Well, I have knowledge from the sworn testimony of other witnesses.

Mr. BROWN: Which will be produced here?

A. Which will be produced here.

169 Q. Is there anything in Toland Brothers' account which you haven't shown which you desire to show as further tending to prove your statement?

A. I have said nothing—there are items——

Q. You spoke about Toland Brothers' account?

A. There are items in Toland Brothers' account that I have not mentioned yet.

Q. Will you do so?

A. Not to-night if the court will let me off.

Q. Let that go until to-morrow?

A. I think the Toland Brothers Company is short I will get through with it. It is only two or three items here. What do you want to ask me?

Q. I don't want to ask you anything, except I want to ask you to point out the items by which you know that that stock sold was yours?

A. Toland Brothers & Company's account with the defendant shows first on January the 26th—we have been over that.

Q. Yes, you have been over that, I think you have been over them all?

A. A sale—a receipt from Toland Brothers & Company of 50 shares Metropolitan and a sale of 50 shares Metropolitan on that day.

Q. You have been over them all unless it is that one?

A. No we have been over that.

Q. It is all shown in Toland Brothers' account. I wanted

170 you to have a full chance to tell how you knew?

A. It is very easily figured up just how the account stood from day to day.

Mr. BROWN: We will waive further cross examination of Mr. Burke until to-morrow morning.

Mr. PENCE: I offer these depositions which I am about to read together with all the exhibits attached thereto in evidence.

Counsel for plaintiff here read in evidence the deposition of Robert C. Drayton, and Evans R. Dick with the exhibits attached thereto.

Mr. BROWN: I think it ought to be stated that the deposition was taken on oral interrogatories.

Mr. PENCE: It appears so here in the deposition itself. Interrogated by Mr. Burke, it says. These depositions were taken in a former suit between the parties hereto wherein the causes of action set out in said former suit were substantially the same as in this suit. Said depositions with the exhibits attached thereto or identified therein, are as follows:

171 STATE OF ILLINOIS, } ss:
Cook County, }

Circuit Court of Cook County.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. VALentine, Defendants. } Dec. Term, 1896.

Office of the commissioner, 400 Chestnut street, Philadelphia, Pennsylvania.

FEBRUARY 4TH, 1897, 10 o'clock a. m.

The depositions of Robert C. Drayton and Evans R. Dick, of the city and county of Philadelphia, State of Pennsylvania, of lawful age, produced, sworn, and examined upon their corporal oaths, on the fourth and fifth days of February, in the year of our Lord one thousand eight hundred and ninety-seven, at the office of said commissioner, 400 Chestnut street, in the city of Philadelphia and county aforesaid, by me, William M. Stewart, Jr., a commissioner duly appointed by *dedimus protestatem* or commission issued out of the clerk's office of the circuit court of Cook county, in the
172 State of Illinois, bearing test in the name of John A. Cooke, Esquire, clerk of the said circuit court of Cook county, with the seal of the said court affixed thereto, and to me directed as such commissioner, for the examination of said witnesses in a certain suit and matter in controversy now pending and undetermined in the said circuit court of Cook county, wherein John E. Burke is plaintiff and Richard C. Crawford and Edward A. Valentine defendants, in behalf of the said plaintiff, upon direct and cross-examination of counsel.

Present: The commissioner, William M. Stewart, Jr., Esq.; counsel for John E. Burke, plaintiff, John E. Burke, Esq.; counsel for Crawford and Valentine, defendants, E. O. Brown, Esq.

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173 *Deposition of Robert C. Drayton.*

The said ROBERT C. DRAYTON, being first duly sworn by me as a witness to the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as of the defendant- in relation to the matters in controversy between the said plaintiff and defendant-, so far as he should be interrogated, testified and deposed as follows:

Examination by Mr. BURKE:

Q. State your name, age, occupation and place of residence.

A. Robert C. Drayton; thirty-eight years of age; banker and broker; 250 So. Seventeenth street, Philadelphia, Pennsylvania.

Q. State whether you are a member of the firm of Toland Brothers and Company; and if so, state how long you have been a member of said firm.

A. I am a member of the firm of Toland, Brothers and Company and have been a member of the firm since May 1st, 1893.

Q. State in what business said firm of Toland, Brothers and Company is engaged; and state also the place where and the length of time said firm has been so engaged in such business.

174 A. They are bankers and brokers and dealers in investment securities. Their place is 104 South Fifth street Philadelphia: Since May 1st, 1893, the present firm has been in existence. The firm before the present one had been in existence since January, 1893.

Q. State whether you know Richard C. Crawford and Edward A. Valentine, defendants in this suit, or either of them; and, if so, how long you have known them, or either of them, personally.

A. I do not know either of them personally. I think one of them was in the office here, on an errand, but I do not know which one it was, and I only met him casually.

Q. State whether the said firm of Toland, Brothers and Company ever had any business transactions with the firm of Crawford and Valentine, a firm composed of the said Richard C. Crawford and Edward A. Valentine.

A. We have had.

Q. State whether said firm of Toland, Brothers and Company ever had any transactions with the said firm of Crawford and Valentine with reference to shares of the capital stock of the Metropolitan Traction Company.

A. We have had.

Q. Have you copies of certain accounts rendered by Toland, Brothers and Company to Crawford and Valentine; and, if

175 so, please produce them to the commissioners, first arranging them in the order in which they were rendered.

A. I have such copies here, and I now hand them to the commissioner.

(The witness produces three papers, which are marked by the commissioner "Exhibits A, B, and C,") and hereto annexed.

Q. At about what time were these accounts rendered and sent to Crawford and Valentine?

A. This one ("Exhibit A") was mailed on the last day of February, 1895. This one ("Exhibit B") was sent on March 14th, 1895. As to the one marked "Exhibit C," I cannot say on what day it was sent but I suppose it was the 29th of March, 1895, as that was the day on which we received their check to balance up the account.

Q. But it was sent?

A. Yes.

(The accounts marked "Exhibits A, B and C" respectively are offered in evidence.)

Q. Have you here also a paper containing one general statement showing the entire account with Crawford and Valentine?

A. I have.

(The witness produces a statement, which is marked for purposes of identification "Exhibit D.") and is hereto annexed. (The
176 paper, "Exhibit D," being a consolidation of the other accounts, is offered in evidence.)

Q. What was the first transaction that your firm had with Crawford and Valentine in Metropolitan Traction stock?

A. The first transaction we had was that we paid Dick Brothers and Co., of this city, for fifty shares of stock; sold the stock for them and remitted them a check for the balance.

Q. That is, Dick Brothers and Co., of this city, turned over fifty shares of Metropolitan Traction stock to your firm for the account of Crawford and Valentine?

A. Yes.

Q. And on the same day that it was turned over you sold the stock and remitted to Crawford and Valentine the difference between what you paid Dick Brothers and Co. and what you sold the stock for?

A. Yes.

Q. That transaction, as I understand you, did not go into the general account that you had with Crawford and Valentine?

A. No.

Q. It was put where?

A. In the account that we called "sundry stocks."

177 Q. On what date do you say that was?

A. January 28th, 1895.

Q. What was the next transaction that your firm had with Crawford and Valentine in Metropolitan Traction stock?

A. The next was on January 29th, 1895. We paid Huhn and Glendinning $24,000 for the delivery of three hundred shares of Metropolitan Traction Company stock.

Q. How did it happen that that stock was transferred to your firm by Huhn and Glendinning? Explain that transaction.

A. We were asked by Crawford and Valentine if we would pay Huhn and Glendinning that amount of money on that amount of stock. We agreed to do it and paid them for it on their order.

Q. The stock was turned over?

A. The stock was turned over to us.

Q. And you held that stock as collateral security for the amount advanced?

Mr. BROWN: I object.

(Ques. withdrawn)

Q. What was the next transaction you had with them?

A. The next was this. On the 30th of January, 1895, we bought fifty shares of Metropolitan Traction at 92⅛

178 Q. Amounting to now much.

A. $4,609.38. Before I go any further I want to explain to you that that is the date on which we paid for it. Our custom is to buy it on the day before and pay for it on the next day. We may have bought it two days before.

Q. In other words, when you buy stock, it is not deliverable until the next day?

A. It is not deliverable until the next day.

Q. And you did not credit your customers with purchase or sales until the next day?

A. Not until the day we pay for it or receive the money.

Q. Is it not true that sometimes stock bought or sold is not delivered for two days afterward? For instance when stock is bought or sold on Friday or Saturday, on your stock exchange here, when is that stock transferable?

A. It is deliverable on the following Monday.

Q. Then it would not be entered up against your customers or in their favor until Monday?

A. No.

Q. So that that fifty shares of stock which is under date of January 30th, 1895, was purchased the day before?

A. Probably. I can verify that by my purchase and sales book, if you want it.

179 Q. But the fact is that that is the custom?

A. That is the custom, yes.

Q. State the next transaction in Metropolitan Traction stock had between your firm and Crawford and Valentine.

A. February 1st, 1895—100 shares purchased at 96¼, amounting to $9,631.25.

Q. That was purchased in the last of January and charged on the 1st of February?

A. Yes.

Q. What was the next transaction in Metropolitan between your firm and Crawford and Valentine?

A. February 4th, 1895—100 shares sold at 100¼, amounting to $10,018.75.

Q. What was the next transaction relating to Metropolitan stock?

A. "Relating" to it? On that same date we paid a draft drawn on us, by Crawford and Valentine, for $2500.

Q. What was the next item?

A. On the 28th of February, 1895, we charged them up with interest $107.10.

Q. On March 1st how many shares of the capital stock of the Metropolitan Traction Company did you have on hand for the account of Crawford and Valentine?

180 A. 350 shares.

Q. State the next transaction relating to Metropolitan.

A. March 14th, 1895—sold 350 shares of Metropolitan Traction at 96¾, amounting to $33,840.63. On the same date—March 14th, 1895—we charged them up with interest amounting to $44.53; leaving a balance of $2967.12 due them.

Q. What was the next transaction relating to Metropolitan Traction stock between the two firms?

A. On March 18th, 1895, we paid a draft drawn by Crawford and Valentine, on us, for $3,000.

Q. What was the next occurrence?

A. On March 29th, 1895, we received a check from Crawford and Valentine for $32.88 to close the account.

Q. What was that check of $32.88 for?

A. To balance the account.

Q. There had been an over-draft by Crawford and Valentine on you?

A. There had been on us.

Q. Of that amount?

A. Yes.

Q. On whose order were these purchases and sales of the Metropolitan Traction Company stock made?

181 A. On the order of Messrs. Crawford and Valentine.

Q. Did Crawford and Valentine ever make any objection to the accounts that you rendered them?

A. No.

Q. What is called the Metropolitan Traction Company—what is that?

A. The Metropolitan Traction Company is a company formed by a number of individuals for the purpose of acquiring a majority or a controlling interest, we will say, of the stock of various surface railroads in New York city.

Q. Street railways?

A. Street railways.

Q. Did your firm receive from Crawford and Valentine a letter dated January 29th, 1895, with reference to shares of Metropolitan Traction stock?

A. Yes.

Q. Please produce the letter.

(Witness produces letter.)

Counsel for defendants agrees that a copy of the original letter

may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter is marked for identification "Exhibit E.") and is hereto annexed.

182 Q. Did your firm receive from Crawford and Valentine a letter dated March 27th, 1895, with reference to the account?

A. Yes.

Q. Have you the letter now here?

A. I have. I produce it. (Letter produced.)

Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter referred to is marked for identification "Exhibit F.") and is hereto annexed.

Q. On January 29th, 1895, did your firm send to Crawford and Valentine a letter with reference to certain shares of Metropolitan Traction stock?

A. Yes.

Q. Have you a copy of that letter?

A. I have.

Q. Will you present it to the commissioner?

A. I now present the copy.

Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

183 (Copy of letter referred to, marked "Exhibit G," is offered in evidence, and is hereto annexed.

Q. State whether on February 4th, 1895, your firm wrote to Crawford and Valentine with reference to any transaction had between your firms relating to Metropolitan Traction stock.

A. Yes, on February 4th, 1895.

Q. Have you a copy of that letter?

A. I have.

Q. Will you present the copy?

A. I will. (Copy produced.)

Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter referred to, marked "Exhibit H," is offered in evidence.) and hereto annexed.

Q. Did your firm send a letter to Crawford and Valentine, dated March 18th, 1895?

A. Yes.

Q. Have you a copy of that letter?

A. Yes.

Q. Will you produce it?

A. I will. (Copy produced.)

184 Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter referred to, marked "Exhibit I," is offered in evidence.) and is hereto annexed.

Q. Did your firm write to Crawford and Valentine on March 29th?

A. Yes.

Q. Have you a copy of that letter?

A. Yes. I now produce it.

Q. Is this a copy of the letter sent by your firm to Crawford and Valentine?

A. It is. (Copy produced.)

Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter referred to, marked "Exhibit J," is offered in evidence.) and is hereto annexed.

Q. Did the firm of Toland, Brothers and Co. send a letter to Crawford and Valentine, dated March 13th, 1895?

A. Yes.

Q. Have you a copy of that letter?

A. I have. (Copy produced.)

185 Q. Is that the copy?

A. That is the copy.

Counsel for defendants agrees that a copy of the original letter may be offered in evidence and have the same effect as the original would have if presented.

(Copy of letter referred to, marked "Exhibit K," is offered in evidence.) and is hereto annexed.

Q. In 1895 on what stock exchanges was the stock of the Metropolitan Traction Company dealt in?

A. I can say it was dealt in, in the Philadelphia stock exchange. It may have been dealt in in every stock exchange in the country for all I know. I only know of our own market. There were some transactions in it in New York but very few. Philadelphia was the principal market, practically it was the only market. As an illustration of what I mean by that I may say that some times American Sugar Refinery stock is dealt in in this market but New York is practically the m-rket for it.

186 Q. What was the current market price of shares of Metropolitan Traction stock, at Philadelphia, on January 29, 1895?

A. It ranged from 90½ to 92⅛—the lowest and the highest prices.

Q. What did it close at on that day?

A. The last sale was at 92⅛.

Q. It closed at that, on that day?

A. That was the last sale.

Q. What was the current market price of shares of Metropolitan Traction stock, on May 20, 1895?

(Objected to as immaterial and irrelevant.)

A. There was only one lot sold that day—20 shares at 96—and in brokers' parlance, we would hardly call that a quotation.

Q. What was the price of the stock on the next day, May 21?

A. From 94½ to 95⅝.

(Question and answer objected to as immaterial.)

Q. When was the account between Toland Brothers and Crawford & Valentine closed?

A. March 29, 1895.

Q. You have had no transactions with them since.

A. No.

187 Q. State whether on or after March 15, 1895, the firm of Toland Bros. & Co. held or carried for the account of the firm of Crawford & Valentine, any shares of the capital stock of the Metropolitan Traction Company?

A. We carried none after that date.

Q. State whether Crawford & Valentine ever deposited with, or advanced to, Toland Bros. & Co., any money as margin for security, on account of transactions in shares of the stock of the Metropolitan Traction Company.

A. I do not understand that question exactly.

Q. Whether they ever deposited any money.

A. No; they never gave us any money.

Q. Did Toland Bros. & Co. ever call upon Crawford & Valentine to deposit any money?

A. No.

Q. What is the present current value of Metropolitan Traction stock?

(Objected to as immaterial and irrelevant.)

A. I can go out and look at the ticker. That is the only way I can find out.

Q. I want the information.

A. (After leaving the room and returning.) 108.

Q. That is the present current quotation, to-day.

A. Yes; 108 bid for it.

188 Q. What is the highest market price of Metropolitan Traction stock, in 1896?

(Objected to by counsel for defendant, as immaterial and irrelevant; he also objects to any answer being given which is not derived from the personal knowledge of the witness.)

A. The highest in 1896, was 112¾. (After referring to book.)

By Mr. BROWN:

Q. Will you state how you know that?
A. I know it from the official report of the stock exchange.
Q. What stock exchange?
A. Philadelphia stock exchange.
Q. A printed copy of which you have before you.
A. Yes. I have not verified it by the books of the stock exchange, at all.

By Mr. BURKE:

Q. How high was Metropolitan Traction stock, in September, 1895?
A. It was 115 on November 19, 1895. That is the highest.

By Mr. BROWN:

Q. How do you know that?
189 A. From the official report. I get my information from the official list of sales at the Philadelphia stock exchange, published by McLaughlin Bros.
Q. Just state again what you said about McLaughlin Bros.
A. They are the official publishers of the transactions of the stock exchange.

Cross-examined.

By Mr. BROWN:

Q. I think you said that you, yourself, were not personally acquainted with Mr. Crawford or Mr. Valentine.
A. I did. As I said, I think I met one of them here; but to say I am personally acquainted with them, I am not.
Q. You think you may have met one of them, but you do not remember it—casually.
A. Yes.
Q. Do you know who introduced you to the one you did meet?
A. No. I think one of my partners did.
Q. Do you know whether any one of your partners is better acquainted with Mr. Crawford or Mr. Valentine, than yourself?
A. Whether one of them is personally acquainted? Yes; I know one of them is.
190 Q. Which one?
A. Mr. Edward Toland.
Q. How long has he known them?
A. I do not know.
Q. Did this firm of Toland Bros. & Co. ever have other business with Crawford & Valentine, than the particular business concerning which you have testified?
A. We have had.
Q. What was its nature?
A. General bonds and stocks.

Q. Have they dealt through you as brokers, in bonds and stocks which are commonly bought and sold in this market?

A. Yes. I cannot say it was absolutely bonds, but I know we had some stock transactions with them. What it was, I could not say.

Q. Crawford & Valentine were, to your knowledge, stock brokers in Chicago, were they not? You knew they were.

A. Yes. We were introduced to them by our New York correspondent, who knew them.

Q. Who was your New York correspondent?

A. E. & C. Randolph of New York. They introduced them to us.

Q. You knew them to be members of the New York stock exchange.

191 A. No; I cannot say that I did know they were members of the New York stock exchange. Do you mean E. & C. Randolph?

Q. No; Crawford & Valentine.

A. No; I did not know they were members of the New York stock exchange.

Q. Were they members of the Philadelphia stock exchange?

A. I do not think they were.

Q. How long had you known them to be stock brokers in Chicago?

A. I do now know.

Q. Can you tell from your books, the first transactions that you had with them in your business?

A. I can by looking over our books.

Q. I wish you would have that done for me. Just give me the date of the first transaction.

A. (The witness leaves the room and returns.) I think that our first transaction with them, that I can find record of, was in September, 1894.

Q. Had they dealt with you frequently?

A. We had considerable transactions with them.

Q. What stocks had they dealt in?

A. At that time, I think they were doing something for us, in Chicago; bought some things for us in Chicago.

Q. So you had a running account with them

192 A. At that time.

Q. Had you any acquaintance with, or business with, the firm of Valentine & McAvoy?

A. I think not. I do not remember anything.

Q. Did you know there was such a firm preceding the firm of Crawford & Valentine?

A. Personally, I did not.

Q. Did you personally attend to this business concerning which you have been interrogated this morning?

A. I have charge of the books of the concern. You see the members of the firm attend to different things. Some attend to one department, and some to another. I attend to the books. When the

transactions would ultimately come to the books, they would come under my control.

Q. Have you given copies of all the correspondence which passed between you, in relation to this Metropolitan Traction stock concerning which you have been interrogated, or was there other correspondence by wire or letter?

A. I imagine there was other correspondence. I suppose there was, from the transactions, because I do not think these covered all the dealings.

Q. Have you looked for that?

A. No; I have not looked for it.

Q. I should like to have you do so. Can you have it looked up?

193 A. Yes; I can have it looked up.

Q. You stated in answer to Mr. Burke's question, that Crawford & Valentine did not deposit any money with you as margin upon this stock. I will ask you what the course of business was in the various transactions which Crawford & Valentine in Chicago had with you here, in relation to the purchase and sale of stock, so far as margins were concerned. Were they obliged, when you were carrying stocks for their account, to keep that margin in some way?

A. Do you mean with reference to this Metropolitan Traction stock?

Q. I am asking about the general course of business.

A. I think I was only subpœnaed to testify about this Metropolitan Traction, and I cannot go into any other transactions.

Q. I have a right, on cross-examination, to inquire about this matter.

A. I prefer not to go on without consulting my counsel, as to what I can testify to and what I cannot testify to.

Q. You stated, in answer to Mr. Burke's question, that Crawford & Valentine did not deposit any money with you as margin upon this stock. I will ask you what the course of business was in the various transactions which Crawford & Valentine in Chicago

194 had with you here, in relation to the purchase and sale of stock, so far as margins were concerned. Were they obliged, when you were carrying stocks for their account, to keep that margin in some way?

A. Yes.

Q. To what amount or proportion of the value of the stock?

By Mr. BURKE:

Q. If there was any custom.

A. We would ask them, on Metropolitan Traction stock, to deposit about $10 a share

By Mr. BROWN:

Q. Then, how was it that in the case of these transactions which you have testified to, they did not deposit margins with you?

A. Because we took up the $300 shares from Huhn & Glendenning, at about $10 below the market price.

Q. That is, as your account shows here, when you took the shares from Huhn & Glendenning, you paid to Huhn & Glendenning what would be equivalent to $80 a share.

A. Yes.

Q. Whereas the market price, as you stated, then was something like 92.

A. Something like that.

Q. That left them a margin of value.

195 A. Yes.

Q. And Crawford & Valentine had continuously, from that time until the account was closed, with the exception of the time during which there was an overdraft of thirty-two odd dollars, a balance with you, had they not?

A. Yes.

Q. To their credit.

A. Yes.

Q. After the first of these transactions in Metropolitan Traction stock, from January 29, 1895, up to May 20, 1895, did you have any other transactions with Crawford & Valentine, than these relating to this Metropolitan Traction stock?

A. No.

Q. All which you have spoken of, took place prior to this account?

A. Prior to that.

Q. At this time were you either carrying for them any stocks, or had you any stocks sold for their account, other than this?

A. No.

Q. I will ask you whether, in the course of business between Crawford & Valentine and yourselves, you ever sold stocks for them short?

A. I do not think we ever did.

196 Q. It is a custom of the broker business, is it not, to sell stocks short?

A. Yes.

Q. That is, to sell them for future delivery.

A. Future delivery.

Q. To sell them whether or not you are in possession of them at the time.

A. Yes.

Q. What was the commission charged on purchase and sales of stock to Crawford & Valentine, by you?

A. 1/16 of one per cent.

Q. Both for purchases and for sales.

A. Yes.

Q. It does not appear in these accounts, that you have furnished them any charge for commission. In what is the commission included?

A. It is included in the prices there. It is included in the prices for which we charged or carried them.

Q. That is, in the account with them you charged them the amounts which you paid for stock, and also 1/16 of one per cent. on the par value of the stock.

A. Yes.

Q. And the aggregate of that amount is what you charged them.

197 A. Charged them with.

Q. And when you sell for their account, you deduct 1/16 of one per cent. of the par value of the stock, from the amount which you receive?

A. Yes.

Q. And you credit them with the difference.

A. Yes. There is some special exceptions made in our stock exchange, on some stocks—not on these stocks.

Q. You mean exceptions as to the amount.

A. I mean exceptions as to the amount.

Q. Have you a copy of the rules of your stock exchange?

A. We have.

Q. Is it in pamphlet form?

A. Pamphlet form.

Q. Will you get me one?

A. They are only for the use of the members. If you went to the secretary of the stock exchange, he might furnish you with one.

Q. You say this was the market for Metropolitan Traction. Was it listed here?

A. It is on what is called our unlisted securities. We have two classes of securities in the Philadelphia stock exchange and also in the New York stock exchange—listed securities and unlisted

198 securities. Unlisted securities are stocks that have not complied with certain laws of the stock exchange, which is necessary to put them on the regular list, where they are called "regular."

Q. Where are the offices of the Metropolitan Traction?

A. In New York.

Q. Do you know why it is that it is dealt in here rather than in New York?

A. New York has never looked favorably upon traction securities.

Q. You mean the New York stock exchange.

A. The New York stock exchange, I mean.

Q. Did you ever know of any certificate of shares of this stock being actually dealt in, in Chicago?

A. I do not know.

Q. Did you send for the $32 which Crawford & Valentine sent you under date of March 27, or did they discover the mistake, themselves?

A. No; we sent for it. It appears in copies of our letters which I have produced in direct examination.

Q. Did you have any knowledge, in the course of any of the transactions between yourselves and Crawford & Valentine, of any principals or other persons for whom Crawford & Valentine were acting?

A. No.

199 Q. Their transactions were all in their own name.

A. In their own name; yes.

Q. Is that the custom of the business, when you do business with brokers abroad?

A. That is the custom of the business.

Q. Do you deal largely, and do brokers in Philadelphia deal largely, in relation to the securities for which Philadelphia is the market, with brokers in other cities?

A. Yes.

Q. And do they ever disclose the principals for whom they may be acting?

A. No; never.

Q. Is the commission which you charged Crawford & Valentine, 1/16 of one per cent., the ordinary and customary commission charged to persons other than brokers for whom you buy and sell stocks?

A. It is not the ordinary commission.

Q. What is?

A. It is just double.

Q. In Metropolitan Traction——

A. It would be $12.50 a share. That is the minimum charge that we can make. We can charge as much more as a man will pay, but we would lose business if we did. We are allowed to divide with brokers in other cities.

200 Q. Is that one of the rules of your stock exchange?

A. That is one of the rules of our stock exchange.

Q. Then, the custom of the business is you charge brokers in other cities, one-half of what you charge your customers who are not brokers.

A. Exactly.

Q. I would like to have you give me a statement of the course of business upon the purchase and sale of stocks in this market, concerning the delivery of the same to the purchasing brokers by the selling brokers. First, I will ask you whether, in dealing as brokers in Philadelphia, you deal entirely upon the stock exchange and with other brokers, in selling.

A. Yes; we deal with other brokers.

Q. In purchasing or selling stocks, you deal with other brokers, in the Philadelphia stock exchange.

A. With other brokers. In the stock exchange, any other persons are not allowed on the floor, except employés.

Q. And in such dealings, do you disclose the names of the persons for whom you are acting?

A. No.

Q. So that in selling this stock, or buying this stock, concerning which you had transactions with Crawford & Valentine you

201 bought from and sold to other brokers in Philadelphia and did not disclose the fact that Crawford & Valentine had anything to do with the matter. Is that so?

(Objected to as not competent cross-examination. The whole line of this cross-examination is objected to as being improper and having no foundation laid for it.)

A. That is so. The only exception is when we paid Huhn & Glengenning and took on their orders. That was not a purchase at all.

Q. I understand, of course, when you took over the stock from Huhn & Glendenning, that——

A. Both Huhn & Glendenning and ourselves knew what it was.

(Same objections as above.)

Q. Then, of course, it was known that the transaction was for Crawford & Valentine.

A. Yes.

Q. Though when you bought and sold stock, you did not disclose the names of the persons?

(Same objections as above.)

A. No.

Q. You have spoken, also, of the term "regular." What does that mean—buying and selling "regular"?

A. That means buying and selling regular, it is deliverable the next day at the stock exchange.

(Same objections as above.)

202 Q. What custom of selling is there in Philadelphia, other than regular?

(Same objections as above.)

A. There is two days, three days, five days, ten days, sixty days and thirty days.

Q. That is, a special contract between the brokers may be made for delivery in the future.

(Same objections as above.)

A. Yes.

Q. Is the time then fixed, or is it an option?

(Same objections as above.)

A. No; the seller has the option of delivering at any time within the period fixed, anything over three carrying interest at six per cent.

Q. Then, there are sales made upon the seller's option?

(Same objections as above.)

A. Yes, sir; and purchases made upon buyer's option.

Q. In such cases, is there a clearing house transaction at any time, of the trades, as it is called, "rung up"? Are the trades settled?

(Same objections as above.)

A. We have a clearing house; yes.

Q. And in the case of sales made for future delivery at seller's option or buyer's option, are those trades sometimes settled
203 without any delivery at all, by purchases and sales of the same stock being off-set against each other, or by any clearing house arrangement?

(Objected to as irrelevant and immaterial and not proper cross-examination, and the same objection made to all questions on this line.)

A. If we had sold a hundred shares of stock to a broker and we bought it back from him, for purposes of convenience, probably no stock would pass. If we did not buy it back from that same broker, we would have to deliver the stock.

Q. If you did not buy it back from that same broker, have you any clearing house arrangement by which the trades might be settled?

(Same objections as above.)

A. Yes; we have the clearing house. You might borrow from another broker and then the clearing house sheet might balance, and therefore we would have no absolute stock passing.

Q. Are there clearing house transactions, also, with reference to stocks that are bought and sold regular?

(Same objections as above.)

A. Yes, sir. The sellers' option question would not enter into the clearing house, at all. We have a clearing house every day.

Q. So that whether stocks are bought or sold for future
204 delivery or bought or sold regular, your clearing house statement would be the same.

(Same objections as above.)

A. Exactly the same.

Q. And it might be that buying from some other broker for one correspondent, there would be the same amount of stock which you sold to that same broker for another correspondent, and there would be no actual stock pass between you.

(Same objections as above.)

A. Exactly.

Q. Because your sheets would balance.

(Same objections as above.)

A. Yes.

Q. And that would also be so if the sum of your transactions upon the Philadelphia stock exchange, in any one kind of stock, equaled in purchases what they equaled in sales.

(Same objections as above.)

A. Yes; in the same stock. It might not go into the clearing house at all. We might make the absolute delivery.

Q. Or it might go into the clearing house.

(Same objections as above.)

A. Or it might go into the clearing house.

Q. The same all over the world.

(Same objections as above.)

205 A. The same all over the world.

Q. Do you know whether in this particular stock here, you had upon hand the actual certificates of stock in each case or not?

A. We had the absolute certificates of stock on hand, in each case.

Q. And you delivered them when you sold.

A. When we sold.

Q. What is the interest which is charged, upon?

A. The interest is upon the amount of money that we paid for the stocks—what we call the balances—the difference between the debit and the credit side of the account.

Q. Were you dealing in Metropolitan Traction stock at this time, for anybody else?

A. I do not know. I guess so. I think we were. I could not say.

Q. How do you know, then, that you had the actual stock on hand here, other than this 300 shares that you took from Huhn & Glendenning? Do you remember, of your own knowledge, or how do you know that as to the 100 shares of Metropolitan Traction bought upon February 1, you yourselves, were not long upon that day, that amount of stock in the stock exchange here?

A. I suppose I could find out.

206 Q. Suppose your books show that you had, upon that day, bought and sold the same amount of Metropolitan Traction, would you then have had actually passed to you the certificate of stock for this 100 shares. I do not mean what the theoretical result would have been, but would you have had the certificate?

(Objected to *and* immaterial and irrelevant.)

A. If we bought and sold, the same day, the same stock, we probably would not have the certificate.

Q. Do you know of your own knowledge?

A. No; I have not looked that up. I do know that on that day, if Crawford & Valentine had tendered us the money for that stock, they would have had the certificates of Metropolitan Traction delivered to them. There was no mark on any stock that we received, that it belonged to Crawford & Valentine—until they paid for it.

Q. I understand that. I understand that you held yourselves ready to deliver, upon the payment of the money which you had charged to Crawford & Valentine, the amount of stock, at any minute.

A. Yes.

Q. There is no question about that. What I want to know, you have already stated in your answer to my last question.
207 There was no particular stock which was marked to Crawford & Valentine.

A. No.

Q. How are these certificates of stock, when you receive them at all, made out? Are they endorsed in blank?

(Same objections as above.)

A. Endorsed in blank.

Q. They may have been issued to anybody.

(Same objections as above.)

A. Yes.

Q. A, B, C, D, E, F?

(Objected to as above.)

—. Anybody.

Q. And are by him endorsed in blank.

(Same objections as above.)

A. In blank.

Q. There is no transfer of stock upon the books of the company.

(Same objections as above.)

A. Not necessarily—in hundred share lots. Fractional lots would have to be delivered by transferring it.

Q. But when the certificate, itself, is delivered, do you send it to the office of the company to have it transferred upon the books of the company?

(Same objections as above.)

208 A. Not necessarily.

Q. Well, usually.

(Same objection as above.)

A. No, sir; not until we are ready.

Q. When you want it.

(Same objections as above.)

A. When we want it, we send it to the office.

Q. For instance, with reference to these 300 shares that you took over from Huhn & Glendenning; did you get an actual certificate of stock from them, for 300 shares?

A. I think we did. I will look and see.

Q. I wish you would.

A. That day was what?

Q. The 29th of January.

A. (After leaving the room and returning.) January 29, we received 200 shares from them. 100 shares was off-set by 100 that we

owed them on another transaction; so we received 200 shares of stock. You see, that is a convenience, simply to off-set the stock. They would simply have delivered it to us, and we would have delivered it back to them.

Q. What I was going to ask about those 200 shares, was: Were they transferred upon the books of the company, to you?

A. No, sir; they were delivered endorsed in blank.

Q. You do not know by whom they were endorsed.

209 A. Some name, and guaranteed by Huhn & Glendenning. They guaranteed the endorsement—either Huhn & Glendenning or some other member of the stock exchange. I couldn't swear who guaranteed the endorsement.

Q. Some member of the stock exchange guarantees the endorsement.

A. Some member of the stock exchange guarantees the endorsement.

Q. That means it is not forgery.

A. That means it is not forgery; exactly.

Q. You have said that up to the time that Crawford & Valentine overdrew upon you $32, they had a balance with you. Suppose that by the fluctuations of the market the Metropolitan Traction stock had gone down to a point at which, if it had been sold at its market value and the credit of that amount been placed upon the credit side of Crawford & Valentine's account, the account would have shown either a debit balance against them, or been even, or a credit balance not equal, by any considerable amount, to ten per cent. of the value of the stock, what would have been the ordinary course of business for you, so far as margins are concerned?

(Same objections as above.)

A. If the stock had been closed out, there would not have been any margin there.

210 Q. I say if the stock had gone to a point at which, had you sold it, the amount would not have been sufficient to cover their debit balance, then what would you have done—not if you sold it, but if the stock had gone to a point where, if sold, it wouldn't have brought sufficient to cover their debit balance, then what would you have done?

A. Supposing them to be reputable people, we would have drawn upon them.

Q. For what?

A. For a sufficient amount to margin the stock down.

Q. A sufficient amount to give you ten per cent. over the market value of the stock?

A. Yes.

Q. That is what I supposed. And that is the custom of your business, with brokers.

A. Yes.

Q. Do you know the reason why the minimum commission you

are allowed to charge brokers, is less than the minimum you are allowed to charge other people?

A. What is the reason?

Q. Has it anything to do with the ease of getting margins?

A. I think it is a reciprocal arrangement, to a certain extent. New York will not divide. Other places will divide. Philadelphia is one. Boston will divide.

211 Q. Is it easier to call brokers than it is other people?

A. Yes.

Q. You can always reach them for margins.

A. Yes; always reach them. But I do not think that is the reason for less commission. We would deal with a broker for less margin than we would for an individual, on account of the ease of reaching him.

Q. What is the amount of margin for Metropolitan Traction, for individuals?

A. It depends upon the individual.

Q. An ordinary individual dealing, to whom you have just been introduced, in whom you do not have some special confidence,—what would be the ordinary margin required by brokers here, for Metropolitan Traction?

A. Some brokers require more, and some less. Metropolitan Traction is in a different position than it was at that time.

Q. At that time,——

A. At that time, I do not think I would have dealt with an individual under fifteen or twenty dollars a share; that is, as you stated the individual to me.

212 Q. I would like to ask you about this matter of borrowing or loaning stocks here. When you are carrying stocks for brokers outside of Philadelphia, in other cities, upon margins, have you the control of the stock, according to the rules of the Philadelphia stock exchange?

A. Yes.

Q. Do you deal with it as your own subject to your obligation to deliver it?

A. As far as our equity in it is concerned.

Q. Is such stock loaned and borrowed here according to the custom of the stock exchange?

A. We are very apt to take it to bank and borrow money on it.

Q. Is it loaned, I mean, for deliveries to other brokers?

A. Sometimes; yes.

Q. Is there a regular custom of that sort?

A. A custom of that sort; yes.

Q. What is that custom?

A. How do you mean, what is it?

Q. What is the general usage in loaning and borrowing stock in the Philadelphia stock exchange?

A. If we had been carrying a stock for any person, we would lend some of that stock, if any other broker wanted to borrow it. We would lend as much of that stock as we had an equity in.

213 Q. By equity you mean your money in it.

A. To the amount that our money was locked up in the stock.

Q. Is there a pit or crowd in the stock exchange, in which such loans are made?

A. No; I do not think it requires it.

Q. There is such a thing in New York.

A. I think there is a loaning and borrowing crowd there.

Q. Did you ever know Mr. Burke before May 20, 1895?

A. No.

Q. You never saw him before that time.

A. I do not remember seeing him before.

Q. You never heard of him in connection with stock transactions, that you remember.

A. Not that I remember.

Q. Are these exhibits, A, B, C, and D, which you produced in the direct examination, transcripts from your ledger, each of them, or is this Exhibit D, of which you speak as being a summary of the others, not a transcript? Does that actually appear in the ledger in that form?

A. No; it does not so appear in our ledger.

Q. A, B, and C, then, are transcripts from your ledger.

A. Yes.

214 Q. And D is a summary, now made, which shows the entire business concerning Metropolitan Traction stock, from your ledger account.

A. Yes.

Q. When it appears upon your books that you are carrying any particular stock for a customer at any particular time, it is the language of the trade, is it not, to say that you are long of that amount of stock for him?

A. Yes.

Q. Then, using that expression, this account shows, does it not, that you were long for Crawford & Valentine, 300 shares of Metropolitan Traction, upon the 29th of January, 1895; 350 shares upon January 30, 1895; 450 shares upon February 1, 1895; and up to February 4, 1895.

A. Yes.

Q. That upon February 4, you sold for their account, 100 shares; and that from February 4 until the 14th of March, 1895, you were long for them, 350 shares; that upon March 14, you sold for their account, 350 shares; and after that time, were neither long nor short.

A. Yes.

Re-examined.

By Mr. BURKE:

—. Of the 300 shares of the Metropolitan Traction stock re-
215 ceived by your firm from Huhn & Glendenning on January 29, 1895, you say that certificates were delivered for 200 shares.

A. Yes.

Q. And for the other 100 shares, there was an off-set.

A. Yes.

Q. What was that off-set? You had 100 shares sold to them, at that time.

A. Yes, sir; we owed them 100 shares of stock.

Q. You had sold to them 100 shares.

A. It may be we had to deliver it to them for another party. I do not remember the transaction.

Q. Explain the off-set.

A. We owed them 100 shares of the stock on entirely different transactions, and they owed us 300 shares on this transaction, and instead of giving us the 300 shares of stock and we delivering them another 100 shares of stock, we simply made an off-set of 100 shares.

Q. Instead of your delivering to them the 100 shares and then they delivering it back to you, you considered that an off-set of the 100 shares.

A. Yes.

Q. If you had that 100 shares sold to them, which 100 shares was an off-set of 100 from the 300 that was coming to you, then
216 you had that stock that you sold to them, and retained that 100 shares in the place of the 100 that they might deliver to you.

A. Exactly.

Q. So that you did have the 300 shares.

A. Yes; the 300 shares. I should say so.

Q. Now, when you sold the 350 shares in March, you delivered that stock on that sale.

A. Yes; 350 shares. I cannot say it was those self-same certificates; but we delivered 350 shares of Metropolitan Traction, on that date.

Q. On that sale.

A. Yes.

Q. You do not always deliver on the next business day, do you? For instance, suppose you sell on Friday, or buy on Friday, that stock is not deliverable until the following Monday.

A. Unless it is sold cash.

Q. So that stock sold on Friday, or bought on Friday, as a rule, would be deliverable on Monday.

A. Yes.

Q. Although there is business done on the following day, Saturday.

A. Yes.

Q. Stock sold on Saturday, would not be deliverable until
217 the following Monday, would it?

A. No.

Q. Is not the question of margins one regulated entirely by—does not it depend entirely upon—the character of the people with whom you are dealing, in regard to the amount which you may require?

A. Yes.

Q. You might have a customer for whom you would make purchases or sales of Metropolitan Traction stocks, for less than ten per cent. margin. Is not that true?

A. We might.

Q. I will ask you whether there is, to your knowledge, any uniform custom or rule, here in Philadelphia, among stock-brokers, as to the amount of margins, or per cent. of margins, required?

A. A uniform rule?

Q. Yes.

A. No; there is no uniform rule. It depends entirely upon the broker, who exacts his own margin. The broker uses his own judgment in that matter.

Q. I suppose there are men here in Philadelphia whom you know so well, as to their character and responsibility, that you would take an order for the purchase or sale of Metropolitan Traction stock, without asking for any money, is there not?

218 A. No.

Q. Is there no such man in Philadelphia?

A. No. I do not think any man in Philadelphia would deal with a broker without some margin, because he would have to do it for other people, and get sewed up himself. I would like to qualify that answer that there is nobody. For a large amount, I would not. I might buy a hundred shares of stock that did not cost more than eight or ten dollars a share, without margin.

Re-cross-examined.

By Mr. BROWN:

Q. You mean, when you say you would not deal without money, that you would not deal without margin.

A. Exactly.

Q. And you do not mean, by the last qualification in your answer, to say that you would deal for anybody in Metropolitan Traction, to the extent of 300 or 400 shares, without margin, do you—for anybody without money?

A. No.

Q. You would not so deal.

A. I would not so deal.

By Mr. BURKE:

Q. I think I understood you to say you have had charge of the books of the office.

A. Yes.

(Signed) ROBERT C. DRAYTON.

Subscribed & sworn to etc.

219 *Deposition of Evans R. Dick.*

The said EVANS R. DICK, being first duly sworn by me as a witness to the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as of the defendant- in relation to the matters in controversy between the said plaintiff and defendant-, so far as he should be interrogated, testified and deposed as follows:

Examination by Mr. BURKE:

Q. State your name, age, occupation and place of residence.

A. Evans R. Dick; 38 years of age; banker and broker; 111 South 21st street, Philadelphia, Pennsylvania.

Q. State whether you are a member of the firm of Dick Bros. & Co., and if so, state how long you have been a member of said firm.

A. I am a member of Dick Bros. & Co., and have been ever since the firm started in 1884.

Q. State in what business said firm of Dick Bros. & Co. is engaged; and state also the place where and length of time said firm has been so engaged in such business.

A. Bankers and brokers; the present office is 423 Walnut street; before that, 145 South Fourth street; before that, 147 South Fourth street, in the city of Philadelphia. They have been engaged
220 in the business of bankers and brokers, I think, since the year 1884; about twelve years or thirteen years.

Q. And you say you have been a member of that firm how long?

A. Ever since it started.

Q. State whether you know Richard C. Crawford and Edward A. Valentine, defendants in this suit, or either of them; and if so, how long you have known them or either of them, respectively.

A. I know them both. I should say I have known Mr. Crawford about three years, and Mr. Valentine about five years.

Q. State whether the said firm of Dick Bros. & Co. ever had any business transactions with the firm of Crawford & Valentine, a firm composed of the said Richard C. Crawford and Edward A. Valentine.

A. They had.

Q. State whether the said firm of Dick Bros. & Co. ever had any business transactions with the said firm of Crawford & Valentine, with reference to shares of the capital stock of the Metropolitan Traction Company.

A. They had.

Q. Have you a copy of your account with them, covering their transaction with you?

221 A. We have.

Q. Have you got it here?

A. It is here.

Q. Will you present it to us?

A. Yes; here it is. (Producing account.)

(The account after being examined by counsel for both parties, is offered in evidence by counsel for plaintiff, and is marked "Exhibit L."

222 A. We have.

Q. Will you present it?

A. I now present it. (Producing account.)

(The account is offered in evidence and marked "Exhibit L.")

Q. Is that which has just been exhibited a correct account of your transactions with the firm of Crawford and Valentine?

A. Yes, sir.

Q. What was the first transaction that your firm had with Crawford and Valentine, in Metropolitan Traction stock?

A. It was to pay for 450 shares of Metropolitan Traction which we received, for the account of Crawford and Valentine, from the firm of Valentine and McAvoy.

Q. You say that 450 shares of Metropolitan Traction stock was transferred from the account of Valentine and McAvoy, to the account of Crawford and Valentine, on June 30th, 1894?

A. Yes, sir.

Q. At whose instance or request was that transfer made?

A. It must have been at the request of Valentine and McAvoy, who were closing up their business and asked us to deliver the stock over to the firm of Crawford and Valentine, who would be responsible for it thereafter.

Q. Was this done with the knowledge of Crawford and Valentine?

A. It was.

Q. What was the next transaction in the account with Craw-

223 ford and Valentine—the next transaction of any kind?

A. The next transaction is the crediting of the account with a dividend received on 400 shares of Metropolitan Traction Company, amounting to $562.50. It is credited under the date of July 16th, 1894.

Q. Go on and give the different transactions as they occurred.

A. The next transaction was the purchase of five shares.

Q. Explain what that is.

A. The next entry in the account, do you mean?

Q. Yes, sir.

A. The next entry in the account or transaction is that of July 31st—interest at four per cent., $165.40.

Q. What was the next transaction?

A. The next transaction was August 27th—the purchase of five shares of Metropolitan Traction at 118 and commission—$590.31.

Q. What was the next transaction?

A. The transaction was on August 30th—we delivered five shares of Metropolitan Traction.

Q. What was the next transaction?

A. The next transaction was the purchase of 10 Metropolitan Traction, at 117½, on September 4th; $1175.63.

224 Q. What was the next transaction?

A. I will ask again for information. Do you mean a transaction in stocks or entries in the account?

Q. Transactions in stocks unless I ask for entries.

A. The next transaction seems to have been September 7th—10 shares of Metropolitan Traction was delivered.

By Mr. BROWN:

Q. When you say "delivered," what do you mean? To whom was it delivered?

A. Delivered out on the order of the owner. I would have to refer to another book to see whether it was delivered by a clerk by the registered mail or by express.

Q. Does it mean sold?

A. No; delivered out, given. By "delivered" we mean that we turn over the physical possession of the shares to somebody having the right to receive them.

Q. At the order of Crawford and Valentine? Is that what you mean?

A. To the order of whoever may be named.

Q. But in this case?

A. In this case, under the instructions of Crawford and Valentine.

225 By Mr. BURKE:

Q. Do you know to whom these shares of stock, the 5 and 10, were delivered?

A. Yes, they were delivered to Crawford and Valentine.

Q. What is the next transaction?

A. September 7th—10 shares of Metropolitan Traction Company delivered.

The next is September 11th—10 Metropolitan Traction purchased at 118 and commission.

The next is September 13th—10 Metropolitan Traction delivered to Crawford and Valentine.

Counsel for defendants interposes an objection, viz., that it does not appear that the account here set forth is a transcript from the ledger of the company.

By Mr. BROWN:

Q. Is the account here an exact transcript from your ledger account? Does it show everything that your ledger account shows?
A. Everything.
Q. You did not make it yourself of course?
A. I checked it off carefully. You will see a check mark against every item there.

226 By Mr. BURKE:

Q. What is the next transaction?
A. The next is September 11th—10 Metropolitan Traction bought at 118 and commission; $1182.62.
The next is September 13th—showing 10 Metropolitan Traction Co. delivered to Crawford and Valentine.
The next is October 1st—50 Metropolitan Traction bought at 116¼; $5,828.12.
The next transaction is October 15th—200 Peoples Traction, sold at 55, $10,987.50.
Q. (Indicating at a point in the entry.) Sold short, is it?
A. (Again reading entry.) "Oct 15th—200 Peoples Traction sold short at 55, $10,987.50."

Counsel for defendants interposes an objection, viz: If the witness is simply stating what the entries upon the ledger account are then the account will speak for itself; if he is giving the transactions, objection is made to the counsel for plaintiffs suggesting any addition to what the witness says.

Q. What is the next transaction?
A. The next is October 17th—200 Peoples Traction sold short, $54.25—$10,837.50.

227 Counsel for defendants objects to the witness saying "sold short" unless he explains the meaning of the phrase.

Q. State what "sold short" means.
A. It means selling the stock before we have received it from a customer for delivery to the purchaser. And until such delivery is made by the customer to us we are compelled to furnish it ourselves.
Q. Go on and give the next transaction.
A. The next was October 22nd—50 Peoples Traction bought (account of short) at 53½ and commission; $2,678.13.
The next was October 25th—100 Metropolitan Traction sold, at 109; ¼ less commission; $10,918.75.
The next was October 30th—100 Metropolitan Traction, bought at 109 and commission; $10,906.25.
The next transaction was December 18th—200 Peoples Traction, bought account of short; 54 and commission; $10,812.50.
The next transaction was December 19th—50 Peoples Traction, bought at 54 and commission; $2703.13.

Q. Do you mean fifty shares?

A. Yes.

The next transaction was December 20th—100 shares
228 Peoples Traction, bought at 52¾ and commission; $5,281.25.

The next was January 9th; cash, account of Yorkshire terrier for R. C. Crawford, $125.

The next was January 11th—200 Metropolitan Traction, sold at 100¼ less commission; $20,137.50.

The next transaction was January 14th—200 Metropolitan Traction sold 101½ less commission; $20,287.50.

The next transaction was January 28th—50 Metropolitan Traction bought at 96 and commission, $4,803.12.

The next transaction was January 28th—150 shares Metropolitan Traction, bought at 97 and commission; $14,559.37.

The next transaction was January 28th—150 Metropolitan Traction, bought at 98 and commission; $14,709.37.

The next transaction was January 28th—50 Metropolitan Traction sold at 94¼ less commission; $4709.38.

The next transaction was January 28th—50 Metropolitan Traction, delivered Toland Brothers: $4700.

The next transaction was January 29th—300 Metropolitan Traction sold at 90⅛ less commission; $27,018.75.

The next transaction was February 5th—50 Metropolitan Traction, bought at 99 and commission; $4953.12.

The next transaction was February 4th—50 Metropolitan Traction sold at 100 less commission; $4996.88.

229 The next transaction was March 14th—50 Metropolitan Traction sold at 96¾ less commission; $4834.38.

The next transaction was March 29th—50 shares Metropolitan Traction, bought at 93 and commission; $4653.12.

The next transaction was March 29th—50 shares Metropolitan Traction, bought at 92½ and commission; $4628.13.

The next transaction was April 17th—100 shares Metropolitan Traction sold at 89⅛ less commission; $8943.75.

That seems to end the account as far as transactions in securities are concerned.

Q. Please give the cash transactions in the account.

Counsel for the defendants requests the witness, in giving these, to explain what they mean.

A. On July 11th (or 16th) the account was credited with dividend on 450 shares Metropolitan Traction; $562.50.

On July 31st the account was charged with interest at 4 per cent.—$165.40.

Q. Interest on what?

A. On the account.

Q. On a balance of the account?

A. Yes.

230 Q. That interest was charged monthly, was it?

A. It was charged at the end of every month.

On August 31st the account was charged with interest at 3½ per cent.—$144.56.

On September 4th the account was credited with draft—$1000; that amount being a draft on the firm of Crawford and Valentine, of Chicago.

(By Mr. BROWN:)

Q. Was it paid by them?

A. It was paid by them.

On September 11th the account was credited with draft, $1000.

On September 30th the account was charged with interest at 3½ per cent.—$142.60.

On October 15th the account was credited with dividend on 500 Metropolital Traction—$625.

On October 16th the account was credited with cash from Dick, Bros. and Lawrence—$4,000.

Q. What does that mean?

A. It means cash paid by Dick, Bros. and Lawrence to us, $4,000.

Q. Explain the whole transaction.

A. Frequently, when we had occasion to ask Crawford and
231 Valentine for money, they would find it much more convenient to wire the money direct to the Chicago bank correspondents in New York, as the communications between Chicago and New York were very much closer and quicker than between Chicago and Philadelphia. They would pay the cash into Dick, Bros. and Lawrence, in New York, or the New York bank would pay it into Dick, Bros. and Lawrence, who in turn would advise us that they had received it for our account. In other words, it was cash remitted to Dick, Bros. and Lawrence, for our account, by Crawford and Valentine of Chicago.

Q. Now resume your statement of the items.

A. The next item is October 31st, interest at 3½ per cent., $152.94.

The next item is November 30th, interest at 3½ per cent., $147.21.

The next item is December 20th, cash to Dick, Bros. and Lawrence, paid to us for the account of Crawford and Valentine, $3,000.

On December 26th, cash from Dick, Bros. and Company, paid by Dick, Bros. and Lawrence to Crawford and Valentine, $1500. It is debited to Crawford and Valentine.

On December 31st the account is charged with interest at
232 3½ per cent., $149.70.

On January 9th the account is debited with cash—acc't of express on terrier—$2.20.

On January 15th the account is credited with dividend on 500 Metropolitan Traction—$625.

Q. On that day (January 15th) how many shares of Metropolitan Traction stock did you have and were you then holding and carrying for Crawford and Valentine?

A. We had 100 shares.

Q. But you have given them credit for dividends on 500 shares?

A. Yes.

Q. You had sold, on the 11th and 14th, 400 shares?
A. We sold on January 11th, 200; and on January 14th 200.
Q. Then you did not have 500 shares at the time you credited them, on January 15th, with $625 dividend?
A. No, we did not.
Q. I want you to explain how you come to credit the account with dividends on 500 shares when, on the day that you did credit them with the dividends, you had only 100 shares.
A. Because the dividend belonged to the man who owned
233 the stock at the time the books closed.
Q. When did the books close?
A. I do not remember.
Q. Did they close prior to the sale?
A. (After referring to data.) The books of Metropolitan Traction closed in the latter part of the month of December, the dividends being payable on the 15th of the following month.
Q. So that the seller, on the 15th of January, would be entitled to the dividends?
A. Provided he was so entitled at the time the books closed.
Q. Yes; the seller, at any time after the books closed and before the dividend was paid, would be entitled to the dividend?
A. He would.
Q. You say that you did collect the dividend on 500 shares on that day?
A. On that day.
Q. The sales on January 11th and January 14th, in other words, were ex dividend?
234 Counsel for defendants objects to the question as leading.
A. They were ex dividend.
Q. Proceed with your statement of the items.
A. The next item was this. The account was credited with cash, by check, on January 28th, $4,000.
Under date of January 30th the account is debited with draft, $1500.
On January 31st the account is debited with interest at 3½ per cent., $77.17.
The account is debited, under date of February 28th, with interest at 3½ per cent., $11.43.
The account is credited, under date of March 28th, with draft, $500.
Q. What was that?
A. That was probably a draft on New York, that they remitted us to mail; it was probably that. They paid us, on that day, $500 by draft.
The account was debited, on March 31st; interest at 4 per cent.—$7.86.
The account was credited, under date of April 1st, with draft—$1,000.
Q. Was that a draft drawn by you upon them?

235 A. It was either a draft drawn by us upon them or a New York draft that they would remit. It would depend very much on the course of exchange or the tightness of the money market. If we had telegraphed them, say, two days before, "Remit us $2,000," that would mean that that was a draft of theirs on Chicago or some bank of New York. Or sometimes, when a bank here would take a draft at par, we might deposit our draft on them. Anyway it was a credit of $1,000 that they paid us.

Q. Proceed.

A. Under date of April 18th the account was charged, debited, with a draft of $1,000. We paid that.

On April 13th the account was charged with interest at 4 per cent., $13.46.

Under date of May 21st the account was charged: to general account, $217.20. That closed the account.

Q. On whose order were the several purchases and sales to which you have referred made?

Counsel for defendants objects to the witness stating the contents of any written instrument, telegram, letter or correspondence; and asks to have the originals produced.

Q. Have you telegrams or letters from Crawford and Val-
236 entine giving instructions to you for each and every purchase and sale of Metropolitan Traction stock to which you have referred?

(The question is objected to by counsel for defendants as calling for the contents of written instruments which are not produced.)

A. I cannot state without looking them up.

Q. Did you ever make a purchase or sale of Metropolitan Traction Company stock, for the account of Crawford and Valentine, without any instructions from them about it?

(The question is objected to by counsel for defendants as calling for incompetent testimony, instead of asking what instructions were given and requesting their production.)

A. I cannot recall that without looking it up, but I don't suppose we did. We do not make transactions without authority at all times.

Q. State how many shares of the capital stock of the Metropolitan Traction Comaany the firm of Dick, Bros. and Company held and were carrying for the said firm of Crawford and Valentine on the following dates: June 30th, 1894; July 31st, 1894; August 31st, 1894; September 30th, 1894; October 1st, 1894; October 27th, 1894;
October 31st, 1894; January 10th, 1895; January 11th, 1895;
237 January 12th, 1895, January 13th, 1895; January 14th, 1895; January 15th, 1895; January 25th, 1895; January 29th, 1895; January 31st, 1895; February 28th, 1895; March 15th, 1895; March 16th, 1895, to March 27th, 1895; March 31st, 1895; QApril

1st and April 2nd, 1895; April 18th, 1895; April 19th, 1895; to the present time.

(The question is objected to by the counsel for the defendants as immaterial and irrelevant.)

A. I cannot answer the question off-hand. I can tell right away what I had at the end of each month; but you ask me as to every day.

Q. What did you have on January 30th, 1894?

A. On January 30th, 1894, we had 450 shares.

Q. On July 31st, 1894?

A. On July 31st, 1894, we had 450 shares.

Q. On August 31st, 1894?

A. On August 31st, 1894, we had 450 shares.

Q. On September 30th, 1894?

A. We had 450 shares.

Q. On October 1st, 1894?

A. Well, I will have to go and work all this account out. I don't want to answer off-hand.

Counsel for plaintiff states that he wants to have the amounts of the stock held and carried upon the dates before mentioned,
238 and suggests how they should be stated.

Counsel for defendants objects to counsel for plaintiff instructing the witness.

Counsel for plaintiff denies having given any instruction.

Counsel for defendants still objects to counsel for plaintiff making a statement to the witness.

COUNSEL FOR PLAINTIFF (to the witness): I wish you to look at those dates (indicating on "Exhibit L") and give the amounts.

A. I will say that, as soon as I can have the assistance of my bookkeeper, I will check off the items and can then answer as to those intermediate dates. I will answer at once for the dates at the end of each month.

(NOTE.—After a controversy between counsel at this point, the following is noted by request of counsel for plaintiff:)

"Counsel for defendants (Mr. Brown) is making certain statements to the witness upon the stand, which are as follows:

"If you are going to make any statement of how many shares your firm was 'long' for Crawford and Valentine, at a par-
239 ticular date, I shall desire, upon cross examination, to have you give a statement of how many shares your firm was 'long,' for them, at all intermediate dates. I do this in order to avoid unnecessary trouble for ourselves or for the witness."

By Mr. BURKE:

Q. You may defer stating the amount of stock held and carried upon the dates mentioned until you have an opportunity to make out a table.

A. I can answer now as to the end of each month because those have been checked off and proven.

Q. Then proceed.

A. (Referring to "Exhibit L.") October 31st, 500 shares, November 30th, 500 shares; December 31st, 500 shares; January 31st, 50 shares; February 28th, 50 shares; March 31st, 100 shares; April 30th, none. There was no transaction after that date in shares.

Q. What was the last transaction in Metropolitan stock with Crawford and Valentine?

A. The sale of 100 shares under date of April 17th, 1895.

Q. That was the closing out?

240 A. That was the last transaction in Metropolitan Traction stock in the account.

Q. After that you had none?

A. We had no shares of stock on hand for them.

Q. Does this exhibit ("Exhibit L") show how many shares of Metropolitan Traction stock you held and were carrying for Crawford and Valentine on each day from June 30th to April 17th?

A. It does—from June 30th, 1894, to April 30th, 1895.

Q. I believe you stated that, on December 31st, 1894, you had on hand and were carrying 500 shares of Metropolitan Traction stock?

A. We had.

Q. That on January 11th you sold 200 shares and, on January 14th, 200 more?

A. That is correct.

Q. And that, after making those sales, you had 100 left?

A. That is correct.

Counsel for defendants objects, that counsel for plaintiff shall, in his questions, state what the witness said and not his own deduction or inference from the account.

241 Q. What is the current market price of Metropolitan Traction stock now?

(The question is objected to as immaterial and irrelevant.)

A. About 108.

Q. Do you know, or have you any means of knowing, what the current market price of Metropolitan Traction stock was on June 30th, 1894?

A. I can find out by consulting the stock exchange books. You can proceed and, if I get the information, I will state it later.

(NOTE.—Subsequently the witness further answered:)

On June 29th, 1894, the price of Metropolitan Traction stock was 113½. On Saturday, June 30th, there was no transaction.

Q. You have had no transactions with Crawford and Valentine since April 30th, 1895?

A. Not since May 7th, 1895, I should judge from this account.

Q. But your last transaction in Metropolitan stock was April 17th?

A. The last transaction we had for them, in Metropolitan stocks, was April 17th, 1895.

Q. From June 30th, 1894, to the close of the account did
242 your firm render to Crawford and Valentine monthly statements of that account?

A. We did.

Q. How do those monthly statements compare with this exhibit ("Exhibit L") that has been introduced in evidence?

A. They should be exact copies.

By Mr. BROWN:

Q. That is, you mean that the statement should be exact copies of the monthly accounts as given in that exhibit?

A. Both of them should be exact copies or transcripts of our books. Therefore they should be the same.

Q. You mean that the account rendered each month would be exactly the same as the statements between the red ink lines on this exhibit?

A. That is what I mean.

By Mr. BURKE:

—. At the end of each month those accounts were rendered to Crawford and Valentine?

A. Those accounts were pasted together on a sheet; the end of one month touching the beginning of the next month.

Q. They were sent separately for each month?

A. They were sent separately for each month.

243 Q. Did Crawford and Valentine ever make any objections to those monthly statements rendered to them?

A. None that I remember.

Q. Would you be very likely to know the fact if there were any objections made to the account?

A. Yes. I might say it would be impossible for me not to know.

Q. And they made none to your knowledge?

A. To the best of my recollection and knowledge they made none.

Q. Look at the letter now shown you, dated July 2nd, 1894, and state whether that is a letter sent by Dick, Bros. and Company to Crawford and Valentine.

A. Yes, sir; I received it.

(Ques. repeated.)

A. I suppose it is. It looks like it.

Q. Is that a letter from your office to them?

A. It looks like it.

Q. Do you recognize the writing?

A. I recognize the signature.

Q. Whose signature is it?

A. That of W. A. Dick, my brother, a member of the firm. I do
244 not care to recognize the letter, as it contains interlineations in ink; that is why I qualify recognizing it. I could prove it by the letter book probably. (After referring to letter book

the witness adds:) I do not find that interlineation on the copy in the letter book. The rest of the letter is correct.

Q. What is written in the letter is not an interlineation is it? Do you mean the writing here?

A. I mean the writing put in there, in ink.

Q. Yes, the words inserted with a pen instead of by the typewriter. What words are they?

A. (Reading from letter:) "Under date June 30, 1894;" which is written with a pen.

By Mr. BROWN:

Q. As I understand it, you do not know whether that was in the letter when it was sent or not?

A. I don't know whether that was sent, or put in by Crawford and Valentine, or not.

(A copy of the letter referred to, dated July 2nd, 1894, from Dick Brothers & Co. to Crawford and Valentine is introduced in evidence and marked "Exhibit M." Counsel for plaintiff and defendants stipulate that a copy of the said original letter, as produced, may be here inserted with the same effect as though the said original had been introduced. The following is the copy:)

245 EXHIBIT M.

"Members of New York, Philadelphia and Chicago stock exchanges.

(M.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *July 2nd*, 1894.

Messrs. Crawford & Valentine, 118 La Salle street, Chicago, Ill.

DEAR SIRS: Under instructions from Messrs. Valentine & McAvoy we have transferred account formerly kept in their name on our ledger to an account which we have to-day opened in your name, statement of which has already been forwarded under date June 30/94.

Wishing the new firm every success, we are,

Yours very truly, DICK BROS. & CO."

(NOTE.—The heading of the above is in print and the remainder of the letter in typewriting, except the signature and the words "under date June 30/94," which are in writing.)

By Mr. BURKE:

Q. Have you your letter press copy books of January, 1895?

A. I have (Book produced.)

Q. (Indicating in book.) I ask you if this letter, dated January 10th, 1895, is a statement, sent by Dick Brothers & Co. to Crawford and Valentine.

A. Yes, sir.

246 (A copy of the original letter referred to is offered in evidence and marked "Exhibit N." By agreement of counsel said copy is admitted, in place of the original, with the same effect as though the said original had been introduced. Said copy is here inserted as follows:)

EXHIBIT N.

"Up-town office, 206 and 208, Betz building.

"Members of New York, Philadelphia and Chicago stock exchanges.

(N.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Jan'y 10th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIR-: In accordance with your instructions, we have this day sold for your account and at your risk, 200 Metropolitan Traction a 100¾

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Q. I ask you if the letter which I now present, dated January 11th, 1895, is a letter sent by Dick Brothers & Company to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit O." Under the same agreement said
247 copy is admitted, in place of the original, with the same effect as though the said original had been introduced. Said copy is here inserted as follows:)

EXHIBIT O.

"Up-town office, 206 and 208, Betz building.

"Members of New York, Philadelphia and Chicago stock exchanges.

(O.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Jan'y 11th*, 1895.

Messrs. Crawford and Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for your account and at your risk, 200 Metropolitan Traction a 101½

Yours truly,

DICK BROS. & CO."

Q. I ask you whether the letter which I now present, dated January 25, 1895, is a letter written and sent by Dick Brothers and Company to Crawford and Valentine.
A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit P." Under the same agreement said copy is here inserted as follows:)

248 EXHIBIT P.

" Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

(P.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Jan'y 25th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day bought for your account and at your risk,

150	Metropolitan Traction	a 98
150	do.	a 97
50	do.	a 96

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL.

P. S.—We note you are remitting direct

$3500 we to credit # 2 ..... $4,000
" debit grain a/c..... 500."

Q. I now present you a letter, dated January 26th, 1895, and ask you if that is a letter written and sent by Dick Brothers and Co. to Crawford and Valentine.
A. It is.

(A copy of the original letter referred to is offered in evidence and marked " Exhibit Q." Under the same agreement said copy is here inserted as follows:)

" Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

249 EXHIBIT Q.

(Q.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Jan'y 26th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for your account and at your risk, 50 Metropolitan Traction a 94¼.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL.

P. S.—We note we are to deliver Toland Bros. and Co. on Monday 50 Met. Traction a 94."

Q. I now present you a letter, dated January 28th, 1895, and ask you if that is a letter written by Dick Brothers and Co. to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit R." Under the same agreement said copy is here inserted as follows:)

EXHIBIT R.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

(R.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Jan'y 28th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for yurr account and at your risk, 300 Metropolitan
250 Traction a 90⅛.

Yours truly, DICK BROS. & CO."

Q. I present you a letter, dated February 2nd, 1895, and ask you if that is a letter written and sent by Dick Brothers and Co. to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit S." Under the same agreement said copy is here inserted as follows:)

EXHIBIT S.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

(S.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Feb'y 2nd*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for your account and at your risk, 50 Metropolitan a 100.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Q. I now present to you a letter dated March 28th, 1895 and ask you if it is a letter written and sent by Dick Brothers and Co. to Crawford and Valentine.

251 A. It is.

(A copy of the original letter referred to is offerec in evidence and marked "Exhibit T." Under the same agreement, said copy is here inserted as follows:)

EXHIBIT T.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

(T.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *March* 28, 1895.

Messrs. Crawford & Valentine, Chicago, Ill.

DEAR SIR-: We have drawn on you to-day draft for $500 which we have credited your account 2 against purchase of 100 Metropolitan Traction stock.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Q. I now present to you a letter dated Jan'y 28, 1895, and ask you if that is a letter written by Dick Brothers and Co. to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit U." Under the same agreement, said copy is here inserted as follows:)

EXHIBIT U.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchanges.

(U.) Dick Brothers & Co., 134c South Fourth street.

PHILADELPHIA, *Jan'y* 28, 1895.

252 Messrs. Crawford & Valentine, Chicago, Ill.

DEAR SIR-: Your favor of the 26th inst. received enclosing draft for $3,500. And as instructed we credited you in general account $4,000 and charged grain account $500.

Yours truly, DICK BROS. & CO."

Q. I present to you a copy of a letter dated March 28, 1895, and ask you if it is a letter written and sent by Dick Brothers and Co. to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit V." Under the same agreement, said copy is here inserted as follows:)

EXHIBIT V.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchange-.

(V.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *March 28th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day bought for your account and at your risk,

50 Metropolitan Traction a 93

50 do. a 92½

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

253 Q. I present to you a letter dated April 16th, 1895, and ask you if that is a letter written and sent by Dick Brothers and Company to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit W." Under the same agreement, said copy is here inserted as follows:)

EXHIBIT W.

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchange.

(W.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *April 16th*, 1895.

Messrs. Crawford & Valentine, Ch'go, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for your account and at your risk, 100 Metropolitan Traction a 89¼.

Yours truly, DICK BROS. & CO."

Q. I now show you a letter of Feb'y 4, 1895, and ask you if that is a letter written and sent by Dick Brothers and Company to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit X." Under the same agreement, said copy is here inserted as follows:)

254 EXHIBIT "X."

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchange.

(X.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *Feb'y 4th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day bought for your account and at your risk, 50 Metropolitan Traction at 99.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Q. I notice that in this letter of January 10th, 1895, you notify them of sale of 200 shares of Metropolitan Traction at par and ¼, and in your exhibit here you have it down as "January 11th." Explain why the dates differ.

A. Because the stock sold on the 10th is not delivered until the next day. It is not credited until it is delivered.

Q. Is that the same with purchases, that they are not charged until the day after?

A. Yes, sir.

Q. But suppose the sales are made on a Friday or a Saturday. When then is the credit or charge made?

A. Unless they are made for cash, it is on the following Monday?

255 Q. So that this sale that was made on January 10th of 200 shares, at par and ¾, was not delivered until the next day?

A. Not until the next day.

Q. On which day you gave them the credit?

A. We then gave them the credit?

Q. How about this sale, referred to in the letter of January 11th, 200 shares of Metropolitan at 101½?

A. You will probably find that that was on a Friday?

Q. The stock referred to in the letter of January 11th, 1895, was not delivered, then, until when?

A. It was not delivered for three days.

Q. It was not credited until that time?

A. It was not credited until delivered.

Q. I ask you if there is any uniform rule or custom among brokers here in Philadelphia, with reference to the amount of deposit or margins or securiry that they require to be deposited with them upon the purchase or sale of stocks?

A. No, there is no uniform rule.

Q. Upon what, if anything, does the amount called for depend?

A. It depends on the character of the stock; it depends on the financial standing of t-e party for whom it is being carried. It also depends sometimes on whether the stock marked is in a feverish condition or a normal condition.

256 Q. I now present to you a letter, dated April 1, 1895, and ask you if that is a letter written and sent by Dick Brothers and Company to Crawford and Valentine.

A. It is.

(A copy of the original letter referred to is offered in evidence and marked "Exhibit Y." Under the same agreement, said copy is here inserted as follows:)

EXHIBIT "Y."

"Up-town office, 206 and 208, Betz building.

Members of New York, Philadelphia and Chicago stock exchange.

(Y.) Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *April 1st*, 1895.

Messrs. Crawford & Valentine, Chicago, Ill.

DEAR SIRS: We ship you tonight through bank 500 shares West Chicago stock with draft attached for $57,337.50.

We have also drawn on you for $1,000 account of Metropolitan Traction stock which we are carrying for your account.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Q. I notice that in this letter you say you have drawn on them for $1,000 on account of Metropolitan Traction stock? Was that the amount that you called for on that date?

A. I should think so.

Q. Was there any particular amount that you ever required Crawford and Valentine to deposit with you as margins on stock?

257 (Objected to as leading.)

A. My recollection is that we required $5.00 to $10.00 a share on Metropolitan Traction, according to the state of the market.

Q. But you did not always call for that, did you? (Objected to as leading and improper in form.) Did you always call for that from Crawford and Valentine?

A. We did not. If we had $10.00 a share and got $9.75 we would not call on a man but would let it run down a good way.

Q. Didn't it run down some time as low as $5.00?

(Objected to as leading and improper.)

A. It may have.

Q. I ask you if it did not sometimes run as low as $5.00?

A. That is a matter as to which I would not like to answer without looking it up, but I would not be at all surprised if it had.

Q. Did they respond by putting up margin and securities whenever you called upon them?

A. I think they did. They did always to some extent.

Q. When would it be convenient for you to get the figures for which I have called, viz; as to the amount, of stock on hand
258 at the particular dates named, a list of which I will give you?

A. I will ask my bookkeeper to make them up to-morrow.

(NOTE.—At this point the further examination of the witness was deferred until the following day, February 5th, 1897, when he was again examined and his deposition completed as follows:)

By Mr. BURKE:

Q. On January 11th, 1895, how many shares of Metropolitan Traction stock were you holding and carrying for Crawford and Valentine?

A. On January 11th, 1895, I was carrying 300 shares at the close of business.

Q. That was sold when?

A. That was sold on January 10th.

Q. On January 10th, 1895, after the sale of the 200 shares, how

many shares then remained in your hands, that you were holding and carrying for Crawford and Valentine?

(Counsel for defendants objects.)

A. I have just answered that question. After the sale of January 10th there were 300 left. You have asked the same question twice. You confuse in your mind the fact that the instant the stock is sold you do not take it out but it is delivered the next day.

259 Q. After the sale of 200 on January 11th, there were left how many?

A. There were only 100 left.

Q. That you were holding and carrying for Crawford and Valentine?

A. On January 11th we sold 200 shares more, which were delivered on Monday, January 14th; but after the close of business on January 14th we had but one hundred shares left for Crawford and Valentine.

Q. Pardon me for asking you again so as to avoid any misunderstanding. After the sale of the 200 shares on January 11th, how many shares, do you say, were you holding and carrying for Crawford and Valentine?

A. We were carrying 100.

Cross-examination.

By Mr. BROWN:

Q. I understand, in relation to the last question asked you by Mr. Burke, that you were carrying 300 shares from January 11th until January 14th. Is not that so?

A. We were carrying 300 shares from January 11th to January 14th; yes, sir.

Q. And that after January 14th, or upon the close of business on January 14th, you were carrying only 100 shares for the account of Crawford and Valentine?

A. That is right.

260 Q. Now, can you tell me how many shares of Metropolitan Traction stock you were carrying for the account of Valentine and McAvoy when their account was changed to the account of Crawford and Valentine, in June, 1894?

A. 450 shares.

Q. And you continued to be carrying 450 shares for the account of Crawford and Valentine until August 31st, did you not?

A. That is correct.

Q. Now, to make the questions more convenient, I will ask you whether you are speaking in the language of the business when you speak of being "long" or so many "short" for a particular account in carrying shares.

A. That is correct.

Q. You would say that upon the 31st of August you were "long" 450 shares for Crawford and Valentine, would you?

A. Yes, sir.

Q. Then you continued to be "long" up to September 4th, when you bought for Crawford and Valentine 10 more shares, did you?

A. When we bought ten more shares, yes.

Q. And were "long" 460 shares until 10 shares were delivered, which appear in your account as of September 7th?

A. That is correct.

261 Q. And then were "long" 450 shares until you bought, for their account, 10 more shares, which appear under date of September 11th?

A. That is correct.

Q. And then were "long" 460 shares until you delivered 10 shares, which appears under date of September 13th?

A. That is correct.

Q. Then up to and including September 30th you were "long" 450 shares for Crawford and Valentine?

A. That is correct.

Q. Upon the 1st of October it appears that you bought 50 shares for their account; and when that was delivered to you you were "long" 500 shares for Crawford and Valentine?

A. Yes, sir.

Q. And upon the 25th of October you sold 100 shares for the account of Crawford and Valentine; and after that was delivered you were "long" 400 shares for Crawford and Valentine?

A. That is correct.

Q. And you continued to be "long" 400 shares until you purchased 100 more shares, which appears on the date of October 30th; when, after they were delivered to you, you were "long" 500 shares for Crawford and Valentine?

A. That is correct.

262 Q. I understand that, in all these cases, there is to be taken into account the fact that the stock bought is not delivered to you until the next day or, if sold, is not delivered by you until the next day; and that, if sold on Friday, it is not, in the natural course of things, delivered until Monday?

A. That is the usual course.

Q. Leaving that out of account, you would say that upon the 31st of October you were "long" 500 shares of Metropolitan Traction stock for Crawford and Valentine?

A. Yes, sir.

Q. And continued to be so upon every day up to the 30th of November, 1894.

A. That is correct.

Q. And also continued to be so upon every day up to the 31st day of December, 1894?

A. Yes, sir.

Q. And you continued to be so from the 31st of December up to and including the 11th day of January, 1895; upon which 11th of

January you delivered, for the account of Crawford and Valentine, 200 shares?

A. That is correct.

Q. I made a mistake heretofore in speaking of the de-
263 livery. These entries are made as of the date when the stock was delivered to you or by you and not as of the date on which the actual sale or purchase was made?

A. Yes.

Q. So that, in speaking heretofore of these dates, you can say absolutely that you were "long" upon the dates I have given you, in the amounts which you have stated?

A. According to our business uses we would be "long" on both dates. We consider that the party is "long" on the day the stock is bought, because while the cash is not passed our obligation to the broker with whom we have made the counter transaction is of course binding upon us. Therefore the obligation of our customer is binding to us. No cash entry is made in the account until the actual stock is handled and our check in payment or the seller's check in delivery is deposited or drawn, as the case may be; and in that case the cash entry is made in the party's account. But the liability begins with us from the instant the transaction is made on the broker's stock exchange, up to the time at which the check is deposited for which the stock is received.

Q. I understand that. Then at the close of business upon January 11th, 1895, you were "long" 300 shares for the Crawford and Valentine account?

264 A. Yes, we were "long."

Q. Upon the 14th you deliver-d 200 more shares, but from January 11th to January 14th you were "long" with 300 shares for the account of Crawford and Valentine?

A. Yes.

Q. After the sale upon the 14th and upon the close of business on the 14th you were "long" 100 shares?

A. At the close of business, on the 14th, I was "long" 100 shares.

Q. These 200 shares delivered upon the 14th were the sale that was made before?

A. The sale, I believe, made on the 11th.

Q. Now, from the 14th of January up to and including the 27th day of January you were "long" for account of Crawford and Valentine 100 shares of Metropolitan Traction?

Q. Well, you understand, in answering that I am simply answering from this account and ignoring the technicality as to whether the stock was bought, in the stock exchange, one, two or three days before delivery. I am answering with the understanding that I am avoiding that technicality.

Q. I so understand.

A. Then you are correct.

Q. Upon the 28th you bought for the Crawford and Valentine
265 account 350 shares of Metropolitan Traction, did you not?

A. We did.

Q. And sold fifty shares?

A. We sold fifty and delivered fifty.

Q. Then upon the close of business on the 28th, it would appear from this account, you were "long" 350 shares of Metropolitan Traction for the account Crawford & Valentine?

A. That seems to be correct.

Q. And upon the 29th it would appear that you sold, for account of Crawford and Valentine, 300 shares and, upon the close of business on the 29th, were "long" 50 shares?

A. Fifty shares. That seems to be correct.

Q. And you continued to be "long" fifty shares upon each day, up to the 4th of February, when you sold 50 shares for this account of Crawford and Valentine, and were even?

A. Yes.

Q. Upon the 5th of February you bought 50 shares of Metropolitan Traction for account of Crawford and Valentine and were, at the close of business on that day, "long" 50 shares?

A. That is correct.

Q. And continued to be "long" each day, up to March 14th, 1895, when you sold 50 shares of Metropolitan Traction for account of Crawford and Valentine, and were again even?

266 A. We were "long" 50 on February 28th, up to March 14th; that seems to be correct.

Q. And were even until March 29th, 1895, when you bought 100 shares of Metropolitan Traction for account of Crawford and Valentine, and were "long" 100 shares?

A. That seems to be correct.

Q. You were "long" 100 shares, each day, up to April 17th, 1895, when you sold 100 shares of Metropolitan Traction stock and made the account square?

A. That is correct.

Q. How long had the firm of Dick Brothers and Company been doing business with Valentine and McAvoy? I do not mean exactly but approximately.

A. Speaking from memory, I should say between two and four years.

Q. Is there now such a firm as Dick Brothers and Lawrence?

A. No, sir.

Q. Was there such a firm in 1895?

A. There was.

Q. What was that firm? I do not care for the names of the members of it particularly, but what was its business?

A. It was a firm of bankers and brokers doing business

267 in the city of New York.

Q. Of which the Dick Brothers, who are members of the firm of Dick Brothers and Company here, were members?

A. That is correct.

Q. Did they do business also with Valentine and McAvoy?

A. They did.

Q. Upon the New York exchange?

A. Upon the New York exchange.
Q. You say that that firm does not now exist?
A. That firm does not now exist.
Q. Are you members of a firm doing business on the stock exchange of New York?
A. I am.
Q. What is the name of that firm?
A. Dick Brothers and Company.
Q. It is the same concern that is doing business here?
A. It is the same partners who compose the firm here.
Q. When was that firm formed?
A. About a year ago.
Q. Then it was since the failure of Crawford and Valentine on May 20th, 1895?
A. It was since.
Q. Up to May 20th, 1895, was the firm of Dick Brothers and Lawrence doing business in New York?
368 A. No; the firm of Dick Brothers and Lawrence was succeeded in business by the firm of Dick Brothers and Wray. They were doing business.
Q. Were they doing business with Crawford and Valentine?
A. That is my recollection.
Q. Did the firm of which you speak, of which Dick Brothers were members, do more business from New York, with Crawford and Valentine than from Philadelphia or less?
A. Do you mean did Crawford and Valentine do more in New York than elsewhere?
Q. Yes.
A. Oh, very much more.
Q. They were very considerable dealers in New York, in stocks?
A. Yes, I would say they were considerable dealers.
Q. Was either member of the firm of Crawford and Valentine, do you know, a member of the New York stock exchange?
A. Yes.
Q. It was Valentine, wasn't it?
A. Archie Valentine was a member.
Q. The relations between the house here in Philadelphia and Crawford and Valentine were quite constant, were they not? There was a good deal of communication, I mean?
369 A. Between Dick Brothers of Philadelphia and Crawford and Valentine?
Q. Yes, and between Dick Brothers and Lawrence and Dick Brothers and Wray, in New York, and Crawford and Valentine?
A. Oh, yes.
Q. Was there a private wire communication?
A. There was.
Q. You say that this account which has been presented here is simply one account kept by Dick Brothers and Company, of Philadelphia, with Crawford and Valentine?
A. Yes.

Q. There does not appear in this account anything of the transaction in New York of the firm of Dick Brothers and Lawrence or that of Dick Brothers and Wray with Crawford and Valentine, save that there is an allusion to the drafts that came through?

A. Nothing.

Q. That is an entirely different account?

A. That is an entirely different account.

Q. Then there is another account here I think you told me?

A. There is another here.

270 (Mr. Brown calls for letters of Crawford and Valentine ordering these purchases and sales, if the witness, has them; and the latter communicates with his order clerk with a view to producing the same.)

Q. The other account between Crawford and Valentine and Dick Brothers and Company, which this exhibit does not cover, is, I understand you, an account simply of your dealings with Crawford and Valentine in Chicago?

A. That is correct.

Q. What were those dealings—in what sort of merchandise or business?

A. They were partially in grains and partially in some of the Chicago Traction stocks, as I recollect it.

Q. You mean by "Chicago Traction stocks" the street railway stocks?

A. Some of the street railway stocks.

Q. Concerning that, I notice in this exhibit a statement concerning People's Traction. What was the People's Traction stock?

A. That was one of our Philadelphia street railways.

Q. What is the Metropolitan Traction stock?

A. That is stock of a street railway in the city of New York.

Q. You do not know of course how Crawford and Valentine kept their books, so far as the accounts of Dick Brothers and
271 Company with them were concerned? Whether they separated the two accounts, as you did, you do not know?

A. I cannot speak from positive knowledge. I would imagine so because they would send us, at the close of each month, a copy of our account in Chicago, which we would check off; and I should say—that would be presumptive, if not positive,—that they kept them in the same way, just as we would send ours each month to them, in Chicago, and they would check them off.

Q. You were dealing in Chicago, with Crawford and Valentine as brokers, in your own name, I suppose, as Dick Brothers and Company?

A. As Dick Brothers and Company.

Q. Your dealings with them were for yourself or for your customers?

A. For our customers.

Q. As between you and your customers, you were dealing in Chicago upon your customers' instructions?

A. Yes.

Q. And you dealt with Crawford and Valentine in your own names?

A. Yes.

Q. Is that the custom of the trade, in brokers' business?

272 A. Yes.

Q. Then when Crawford and Valentine dealt with you, in Philadelphia, in stocks, did they deal in their own names?

A. In their own names.

Q. Did you know any of their customers or their principals in the transactions?

A. I have been introduced to men who said they were customers of theirs.

Q. Did you know, in any particular transaction, as to who they were who were dealing in stocks here?

A. My recollection is that Mr. Burke passed some time in Philadelphia; and he gave orders, if I recollect it, in Metropolitan Traction which, if I also recollect it, he had authority to do from Valentine and McAvoy or whatever the firm name was, the Valentine firm.

Q. That was before the time of Crawford and Valentine?

A. No, they both. I say "the Valentine firm." If I recollect it, wherever we executed an order of that kind we at once communicated over the private wire so as to post them at once as to what their customers were doing.

Q. Did you know anything about these particular transactions?

A. I cannot testify as to any particular transaction, no.

273 Q. You received your instructions, as to those transactions, from Crawford and Valentine and were dealing with them, were you not?

A. We considered we were dealing with Crawford and Valentine, although my impression is, as is often done where a customer of a firm goes to another city in which the firm is dealing, they would give certain general powers such as "you can let so-and so trade to a certain extent, say to 500 shares, according to the transaction, of his particular account.

Q. (Referring to items on exhibit.) Do you know of any one of these as to which that was so?

A. I cannot identify any particular one of those as having been given those instructions.

Q. Then you cannot say, as to any particular transaction here, that you know that Mr. Burke had anything to do with it?

A. I cannot identify any particular one.

Q. And you did not know for whom Crawford and Valentine might be buying?

A. Not generally.

Q. No, not generally as to any of these transactions. You would not know, for instance, if in January Crawford and Valentine

274 ordered Metropolitan Traction sold, whether they were ordering it sold because Mr. Burke was their customer or Mr.

Pullman was their customer or Mr. Yerkes was their customer or not?

A. No, I have no recollection of that at all.

Q. Have you any idea of when you met Mr. Burke in Philadelphia first?

A. No. I should say, if I recollect it, Mr. Burke came in with a letter of introduction from one of the Valentine firms. I do not recall whether it was Crawford and Valentine or the other. He was in Philadelphia, I think, several times. It seems to me I can recollect very well talking with him, sitting in our other office.

Q. Do you remember when?

A. I should say somewhere around two or three years ago. Can I refresh my memory by speaking to Mr. McCall about it?

A. Yes.

(A brief colloquy here ensued between the witness and the individual named by him.)

Q. Are you sure that you ever saw Mr. Burke before the failure of Crawford and Valentine, which took place in May, 1895?

A. Yes, I feel very confident.

Q. Can you come any nearer to it?

275 A. I might say I feel sure of it. It is rather hard to remember a person who makes no special impression upon you, one way or the other—I mean no disrespect to Mr. Burke here—and who merely exchanges courteous remarks.

Q. Did you trade for Mr. Burke outside of the Crawford and Valentine trades?

A. Not to my recollection. I would not like to say positively without consulting my books but not to my recollection.

Q. In the letter from you to Messrs. Crawford and Valentine, which has been introduced in the direct examination, "Exhibit Y," you say, "We ship you to-night, through bank, 500 shares West Chicago stock with draft attached for $57,337.50. We have also drawn on you for $1,000 account of Metropolitan Traction stock, which we are carrying for your account. Yours truly—*p. p.* Dick Brothers & Company—Geo. McCall.) Does this West Chicago stock transaction appear in this account? (Indicating Exhibit L.)

A. I believe not.

Q. Would it appear in the other account of which you speak?

A. It would appear in the other account.

Q. You dealt, then, quite largely through Crawford and Valentine in Chicago?

276 A. No, our account with them was not a very large one. The transactions were very intermittent.

Q. But at times of considerable amounts?

A. Yes, such as that particular transaction.

Q. What did Crawford and Valentine deal in, in New York?

A. All kinds of miscellaneous securities, stocks and bonds.

Q. Such as were usually marketable in New York?

A. Such as were active on the stock exchange in New York; such as Pullman, St. Paul, Rock Island, Reading and others.

Q. Were they accustomed, through you, in these stocks, both to buy and sell?

A. They were accustomed to both buy and sell?—yes.

Q. Did they sell "short"?

A. Sometimes.

Q. In all these transactions was it the custom or rule between you that the transactions should be kept margined by a sufficient margin?

A. Yes.

Q. In Metropolitan Traction stock what did you require, as a rule?

A. My recollection is from $5.00 to $10 per share.

277 Q. You said, in your direct examination, that you would sometimes perhaps not allow the margin to run under $10. I ask you whether, according to the custom, the usage, the nature of the business, it is possible at any time to take sufficient margin to make you sure or safe?

(Counsel for the plaintiff objects to the question as incompetent and irrelevant, in asking for what is "possible.")

Q. I mean, may the market break or advance so suddenly as to wipe out the margin before you can get at your customer?

A. Often. Sometimes there is a great fluctuation.

Q. So that you have to do the best you can toward keeping your margins with your customers, do you not?

A. We have to do the best we can.

Q. But you say it was your intention to keep this Metropolitan Traction margin at least $5 to $10?

(Objected to.)

A. Yes. I might express that better by saying that that was our business rule, which we lived up to as well as we might.

Q. Now, would it make a difference if you happened to be indebted to Crawford and Valentine for margins, in Chicago, upon this other account? Would you transfer from one account to the other?

A. I think we did several times. That is my recollection.

278 Q. You would transfer also, I suppose, from the New York account?

A. From New York, yes.

Q. So as to keep generally safe?

A. To keep generally safe.

Q. And they would do the same, I suppose?

A. They would do the same.

Q. Mr. Burke has offered certain letters here. I propose to offer certain others. I ask you to say whether the letter I now show you, of March 13th, 1895, is a letter from Dick Brothers and Company.

A. It is.

Q. The letter is as follows:

"Dick Brothers & Co., 134 South Fourth street.

PHILADELPHIA, *March 13th*, 1895.

Messrs. Crawford & Valentine, Chicago, Ills.

DEAR SIRS: In accordance with your instructions, we have this day sold for your account and at your risk, 50 Metropolitan Traction at 96⅜.

Yours truly,

p. p. DICK BROTHERS & COMPANY.
GEO. McCALL."

Is that the letter?

A. That is the letter.

By the way, looking at that recalls to me that I gave the ad-
279 dress, yesterday, as "145 South Fourth street." It was 134 South Fourth street.

Q. The commissioner has produced here, as having been returned to him by the receiver of Crawford and Valentine of Chicago, a package of papers, among which there appear to be seventeen memoranda of transaction-, or statements of accounts between Dick Brothers and Company and Crawford and Valentine. Are these the memoranda which were sent by Dick Brothers and Company to Crawford and Valentine?

(Counsel for plaintiff objects to the accounts or memoranda and any reference to them as not proper matter to be introduced on cross-examination; that the same would be a part of the defendant's case in-chief, which he cannot bring in on cross-examination.)

A. Yes, they are.

Mr. BROWN: They run from one to seventeen. I will ask the commissioner to mark them for identification, omitting the first one; of March 13, 1895, which I have just read in full.

(NOTE.—The memoranda referred to will be found annexed to this record of depositions.)

Q. According to your best recollection, were these memoranda sent with or without accompanying letters?

A. They are not supposed to be sent, in each case, with the letter. The letter goes the same day and inclosed in the same en-
280 velope but there is no necessity for it.

Q. Have you the correspondence in which Crawford and Valentine gave you the instructions for the transactions which you made for them here?

A. No, I believe we would not have.

Q. Why not?

A. The reason I have not before me these orders or memoranda is because after the account has gone unquestioned for a period of time, say about a year, we usually destroy them, as they accumulate too rapidly.

Q. Did some of those instructions come over the private wire, of which you speak, between Crawford and Valentine and yourself?

A. According to my recollection, practically all of them.
Q. Were such messages kept?
A. For some months.
Q. And then destroyed?
A. As far as I can tell, they have been destroyed.
Q. Were they letters confirming such telegrams?
A. I should suppose so.
Q. Have you destroyed any business letters within the last two or three years?
281 A. My bookkeeper tells me they were destroyed when we moved.
Q. How long have you been in the brokerage business?
A. About seventeen years.
Q. You know the customs of the trade in Philadelphia, I suppose.
A. I think I do.
Q. Is there a Philadelphia stock exchange?
A. There is.
Q. Of which you are members?
A. Yes, sir.
Q. The trading that was done in stocks and the trading shown by this Exhibit, ("L"), is it done upon the stock exchange?
A. Usually.
Q. And with other brokers?
A. Usually.
Q. As shown by this? (Indicating "L") I mean by "this" the transactions in account of Crawford and Valentine?
A. Yes.
Q. In so trading do you disclose to the persons with whom you trade the names of your principals or customers?
A. Never unless we are asked to do it.
282 Q. Did you in these cases? (Indicating on Exhibit L.)
A. Referring to the notices shown me, no.
Q. In purchasing or selling to other brokers, do you learn from them their principals or customers, or do you deal with them in their own names?
A. We deal with the broker himself.
Q. You do not know his principal or customer in the transaction?
A. No.
Q. In dealing with one broker, for different customers, may you have transactions both of purchase and sale with him, in the same stock, on the same day?
A. There are instances of it.
Q. In such a case what is the result of the trade, that is, between you and the other broker? Do the trades off-set each other, so far as they may?
A. They would.
Q. And to that extent the actual stock would not pass?
A. It would not pass.

Q. Is there a clearing house arrangement by which purchases and sales are off-set when they are not made with the same broker but with different brokers, in the same stock on the same day?

A. Yes.

Q. So that, according to the custom and the usage of trade
283 in buying and selling stocks in Philadelphia, upon the stock exchange, the question of the delivery or receipt of the actual certificates of stock and the number so received depends upon the aggregate amount of the particular broker's purchases as compared with the aggregate amount of his sales, does it not?

(Counsel for plaintiff objects to this line of examination as improper cross examination, in introducing matter that had not been touched upon in the direct examination.)

A. That is correct.

Q. Are there any particular certificates of stock, therefore, under such transactions, that can be identified as belonging to a particular trade, if there were several trades in that stock upon that day.

A. Usually it would be impossible to identify them.

Q. Would it always be so?

A. I would have to figure on that pretty hard before I could say "always." But it would be very difficult, if not impossible.

Q. Now, these certificates of stock which are delivered, received and passed from hand by brokers in Philadelphia—are they, as a rule, endorsed specially or in blank?

A. Invariably in blank.

Q. Does the person who endorsed the certificate bear any
284 relation to the trade generally or to the negotiation in which the stock passes?

A. Not often. It constitutes what is called a good delivery, under the stock exchange rules.

Q. That is, it may be endorsed by a person who is an entire stranger to the transaction and it may have passed through many hands after having been endorsed by him?

A. It may have after being endorsed by him.

Q. Were those certificates of stock transferred, and were these certificates of stock which were the subject of the trades in Exhibit L transferred upon the books of the Metropolitan Traction Company, after they came into your hands?

A. We almost invariable do that.

Q. To whom then are they transferred?

A. To ourselves.

Q. To Dick Brothers and Company?

A. To Dick Brothers and Company.

Q. And they stand then in your name?

A. Yes.

Q. Do they bear your endorsement when they pass out of your hands then?

A. They do.

Q. Is that the general custom or the custom of your particular house?

285 A. What you may call the better class of houses, those that have sufficient capital to make the transfers, prefer to have the stock as much as possible in their own name. It is more convenient for the collection of dividends or for voting on it; because, if you buy a thousand shares of Metropolitan Traction Company stock, you have to purchase it—say at to-day's purchase—at $108,000. If you do not want it transferred you can at once take those certificates to the bank and borrow $90,000 on them. If you want to have it transferred in your name you must send it over to New York, and it will probably be three days before the new certificates are returned, during which time you will have $108,000 locked up.

Q. Then the brokers, when carrying stocks or accounts for their customers, use the stock for the purpose of raising money upon it?

A. They do.

Q. Is there any custom of the trade by which they use the stock, in Philadelphia, by borrowing and lending it?

A. They do.

Q. What is that custom?

(Counsel for plaintiff interposes an objection, that this is improper cross-examination, as it is examining on matters that have not been called out in the direct examination.)

286 A. Where brokers need stock for the purpose of delivery and they do not happen to have it, either by reason of its being short sales——

Mr. BURKE: Before the witness answeres any further, I wish to ask, are there any rules of the stock exchange in reference to that.

Mr. BROWN: I object to the counsel interrupting the cross-examination.

The WITNESS (resuming and completing his answer):
—or from the fact that their customer has not yet delivered it to them, they then go to some one who has stock and borrow it from them, paying to the lender the market price of the stock at that time. This is, in effect, equivalent to borrowing money from the stock at its full market value.

Q. How do you mean "paying to the lender"—giving him the money?

(Same objection renewed.)

A. Giving him the money.

Q. And when the stock is returned the money is returned?

A. The money is returned.

Q. With interest or commission or what?

A. The interest or commission depends entirely on whether money is in demand or stock is in demand.

287 Q. Did that condition of things or of business prevail in New York also?

Mr. BURKE: I wish to have it understood that I interpose the same objection to each of these questions.

A. Yes.

Q. Do you remember what Mr. Burke said to you or any particular conversation you had with him when you saw him in Philadelphia?

A. Some years ago?

Q. Yes.

A. No.

Q. You do not remember whether he seemed to be acquainted with the stock market or not?

A. Yes, he talked about stocks in a general way, but I don't remember it.

Q. You do not remember how familiar he seemed with the course of business, the manner and modes of the business, do you?

A. I have only a general impression that he knew something about it but not as to how much.

Q. About Metropolitan Traction: What place is the general market for Metropolitan Traction stock?

A. Philadelphia.

288 Q. Is it a listed stock in Philadelphia?

A. I think not.

Q. Is it listed anywhere?

A. It is listed in New York and dealt in in the unlisted department in Philadelphia.

Q. How long has it been listed in New York?

A. I should say from a year to eighteen months.

Q. It was not listed during the time of the transactions that are set forth here in Exhibit L?

A. Not to the best of my recollection.

Q. At that time it was dealt in principally in Philadelphia?

A. I might say almost entirely.

Q. Do you or do other brokers in Philadelphia do business for brokers throughout the country, in other cities? Is it the custom?

A. We do when we can get it.

Q. Do those brokers deal with the brokers in Philadelphia, in their own names, or do they disclose their principals?

A. They practically never disclose their principals.

Q. What is the commission which is charged to those brokers, as a rule, for executing orders for them, in Philadelphia, by purchase and sale?

289 A. Our Philadelphia commissions law is a very complicated law, but the usual commission is about 12½ cents a share.

Q. Do you make any difference between the commissions charged to brokers and those charged to individuals?

A. On the major part of the securities dealt in in Philadelphia,

we can divide our commissions with the broker, in other words, charge him one-half of what we would charge a man who is not a broker.

Q. That is a general custom, is it?

A. That is on the majority of stocks.

Q. Then you charge them interest upon such money as you may have to use?

A. On such money as we advance.

Q. Monthly?

A. Monthly.

Q. If, therefore, a broker in another city should have a person order a broker in Philadelphia to buy stock of a certain kind and should have another person order him to sell the same stock, each transaction being in the name of the broker ordering it, what would be the showing upon the account of the broker in Philadelphia with the broker in the other city, so far as that stock was concerned? I mean that if A goes to Crawford and Valentine and has some
290 transaction with them in consequence of which Crawford and Valentine tells you to buy Metropolitan Traction stock, and B. goes to Crawford and Valentine and has some transaction with them in consequence of which Crawford and Valentine tells you to sell Metropolitan Traction upon the same day, what is the result on your account here with Crawford and Valentine?

A. The result is that we have the transaction recorded on the stock exchange, we put it on both sides of Crawford and Valentine's account and charge them in both ways.

Q. And the stock does not pass?

A. The stock does not pass.

Q. Therefore, in such a transaction as that, there would be no stock coming into your hands?

A. No stock would come into my hands.

Q. These certificates of stock which, by you, are transferred to your own name at the offices of the company are exchanged at the offices of the company, are they not, for new certificates of stock issued directly to you?

A. They are.

Q. That is the way in which the transfer is made?

A. It is.

Q. And they are kept by you in your name? You do not endorse them to your customers unless you are paid for the
291 value of them?

A. That is correct.

Q. And when you buy and sell for the account of any customer, broker or otherwise, during the time that the stock is being carried by you, under the arrangement of which you have spoken, it is in certificates issued to Dick Brothers and Company by the company, whatever it may be?

A. Usually.

Re-direct examination.

By Mr. BURKE:

Q. Is it always issued to you on stock purchased, by you, for the account of some other broker? Do you always have that stock transferred to your own name?

A. We do not.

Q. Is it not true that the certificates are so endorsed that they pass without any endorsement from you?

A. That is a question that it is impossible to answer. I might answer that possibly fifty per cent. of them have to be endorsed by us, seventy-five per cent. of them have to be endorsed by us, and twenty-five per cent. of them come in in such shape that they require nothing to be put on them by us.

Q. What proportion of the stocks in which your firm deals do you have transferred upon the books of the company that issued the stock?

292 A. I should say seventy-fice per cent., I think.

Q. You take it to the company and have the company issue new certificates of stock to you for seventy-five per cent. of the transaction?

A. That is a guess. I think so.

Q. How is it in dealing in St. Paul stock? Do you do it in St. Paul or Rock Island?

A. You must remember that we do not deal in St. Paul. That is a New York stock.

Q. Don't you deal in it here at all?

A. Very little.

Q. When you do deal in it don't you have it transferred to your own name?

A. If we were going to carry it, we would; yes.

Q. I say generally do you have it transferred to your own name?

A. If we were going to carry it we would.

Q. What proportion of the stocks of St. Paul and Rock Island do you carry?

A. I should say that seventy-five per cent. of the stocks we deal in we carry, and we have those transferred to our name.

Q. What do you mean by "carrying"?

293 A. We buy them for a person to hold them. If I am dealing in St. Paul between the markets, as we do a great deal, we do not carry that stock. It is not worth while to buy it in our name because we may buy it in Philadelphia and ship to New York to-morrow, but if we buy it in our own land, in New York, we ship it to Philadelphia and deliver it to-morrow. If you come into my office and tell me to buy 500 shares of St. Paul, give me the money, and I know you are going to carry it, I will have those 500 shares transferred in my own name.

Q. You said, in answer to a question asked you by Mr. Brown, that if a broker, a correspondent of yours, sends you an order to buy 100 shares of a certain kind of stock for one customer and also sends

you an order to sell 100 shares of the same kind of stock for another customer, you would do what in a matter of that kind?

A. I say that I would have the transaction recorded at the stock exchange and would send him——

Q. (Interposing.) On the order of the broker to purchase, you would go and purchase the 100 shares of stock?

A. I did not say that. You do not let me answer. I say I would have the transaction recorded on the stock exchange; I
294 would then send the broker a report, "We have bought and sold for your account 100 shares of (blank) stock, at (blank) price." I would then put the transaction through both sides of his account and charge him a commission on each side.

Q. When you would get his order first to purchase 100 shares of stock, you would go then upon the stock exchange, *it if* was open, and make the purchase?

A. No, I would not. I would have what is called "a wash transaction;" I would buy it and sell it myself.

Q. If then a person transmits to your firm here an order for a certain number of shares of a certain stock, you say you would not execute the order by purchasing the stock? I am now speaking simply of a purchase.

A. No; if a man sent me an order to buy 100 shares of stock and I could execute it, I would buy it.

Q. You would go on the exchange and buy it?

A. Yes.

Q. Then supposing later on the same day he sent you an order to sell that 100 shares of stock or a 100 shares of like stock, what would you do?

A. I would go there and sell it.

295 Q. If those were the only transactions, then, the broker's account would be closed?

A. His account would be closed.

Q. Suppose that a broker sends you an order to purchase 100 shares of a certain kind of stock—you say you would go upon the exchange and buy it?

A. I would.

Q. Then that stock would be deliverable to you the next day?

A. It would.

Q. Suppose that the same broker should send you an order, upon that day, the same day, to sell 100 shares of the same stock, you would go upon the exchange and sell that stock, would you?

Counsel for defendants objects, that the question is precisely the same as that asked before and already answered.

A. I would.

Q. Now, you would have upon the stock exchange a contract of purchase and a contract of sale?

A. I would.

Q. They might be two different brokers upon the exchange?

A. They might.

Q. You would have to deliver to one and receive from the other 100 shares of stock?

296 A. That is correct.

Q. And that stock would be actually passed to you?

A. It would.

Q. But as to the broker who sent his order to both sell and buy 100 shares of the same stock on the same day, his account would be closed and nothing would be going to him? Is that right?

A. That is right.

Q. Are there any printed rules of your stock exchange with reference to borrowing and loaning of stocks?

A. I do not think so.

Q. Do you know whether there are or not?

A. I think I would know if there was such a rule. That is a question of fact about which there is no need of guessing. I will get the rule for you, if there is one. (*After producing rules.*) There is a rule here. I did not know of it.

Q. You need not read it. I simply asked you if there was such a rule.

A. I did not know of it. It might just as well not be written there at all. But I had better correct my answer. I gave you a wrong answer.

Mr. Burke suggests a correction by striking out the first portion of the answer.

297 Mr. BROWN: I object. The witness having acknowledged that he gave an incorrect answer, it is too late to strike it out.

By Mr. BURKE:

Q. You said something about the transfer of money from the New York house to the Philadelphia house and from the Philadelphia house to the New York house, on account of brokers with whom you correspond. I ask you if any transfer of moneys or securities or margins from one house to the other are made without the orders of the parties concerned.

A. They are not.

Q. So that if, for instance, there was a transfer of money or security from New York to Philadelphia, on account of Crawford and Valentine, it would be on Crawford and Valentine's order, would it not?

A. We would never make a transfer for any one without their instructions, except in case of an insolvency, (we would then do it ourselves,) so that no transfer of that kind was made previous to their insolvency, without instructions. Whether one was made since or not I would have to look at the books to refresh my memory before I could answer.

Q. I ask you if there are any rules, or if there is any rule, of your stock exchange here, with reference to the clearing house and

298 the manner of transacting business on the clearing house.

A. There are.

Q. Have Dick Brothers and Company of Philadelphia, your firm, any individual account with either Crawford or Valentine, or have they ever had?

A. What do you mean by "individual account"?

Q. Has the firm of Dick Brothers and Company of Philadelphia ever had an individual account with Edward A. Valentine one of the defendants in this suit?

A. I have no recollection of it. I would want to consult my books before answering positively.

Q. I wish you would ascertain and tell me.

(NOTE.—After a pause, the examination proceeded. The question was answered later.)

Q. You say that your firm had two accounts with Crawford and Valentine—No. 1 and No. 2. They were entirely distinct, were they?

A. They were entirely distinct.

Q. No. 1 account embraced transactions that you had with Crawford and Valentine, in dealing in stocks, bonds, and grain in Chicago?

A. That is correct.

Q. That was what you call your account with them, was it, or their account with you?

A. We called that the account of Dick Brothers and Company with Crawford and Valentine.

Q. The other was the account of Crawford and Valentine with Dick Brothers and Company, and that involved transactions here in Philadelphia?

A. That is correct.

Q. There were no transactions in Metropolitan Traction stock entered in account No. 1, the account at Chicago?

A. I believe not.

Q. If your firm makes a purchase of a certain number of shares, say of 200 shares of stock, for a customer, upon a certain day, you say that your firm would then be "long" of that stock for that purchaser, from the time the purchase was made?

A. That is hardly the way that I would express it. I would not express it that way myself but that would convey the meaning probably. I would say that the man was "long" 200 shares with us, that the customer was "long" 200 shares with us.

Q. That is, he would be under obligation to take that stock?

A. Under obligation to take that stock.

Q. And if you sold, say to-day, 200 shares for a customer, without his having the stock, that would be a "short" sale, would it?

A. It would.

Q. He would be "short"?

A. He would be "short" on our books, 200 shares of stock.

Q. And you would be under obligations to carry out both those contracts?

A. We would.
Q. Both to the purchaser and to the seller?
A. Yes.
Q. Now, if a party had with you 100 shares of stock that had been bought; and he gave an order to-day to sell 100 shares, he having only 100 shares, then after the sale was made he would have no further rights to that stock?

(The question is objected to as leading and because, this being re-direct examination, the questions must not be made leading.)

A. No, if he gave an order to sell it he would have no further rights to it.
Q. After the order had been given to you to sell and you had made the sale, would he have any further rights in that stock?

301 (Objected to as leading.)

A. Not in that particular stock unless he had a dividend coming to him which had not yet been paid over.
Q. In answer to Mr. Brown you stated that the purchases and sales of Metropolitan Tractiin stock, as appear here upon Exhibit L, were made upon the dates given in that exhibit.

(Counsel for plaintiff objects that that was not the answer of the witness.)

Q. Do you mean to say that the purchases and sales of Metropolitan Traction stock were made on the dates that appear upon Exhibit L, which is before me?
A. I would like to see what I did say to Mr. Brown because I don't think I said that to him.
Q. Without referring to what you said to Mr. Brown, is that true that the purchases and sales were made on the dates which appear on this exhibit as those on which they were made?
A. They would not be likely to be made on the dates that are given on this exhibit, for the usual custom is to buy stock one day which is to be paid for on the following day. Therefore, unless a holiday or Saturday intervene, the natural sequence would
302 be that the transactions occurred one day ahead of the entry in the account.
Q. That is the usual course?
A. That is the usual custom. As far as I could, I explained that to Mr. Brown.

Mr. BURKE: Well, Mr. Brown explained it differently.
Mr. BROWN: Counsel for defendants objects to the statement of plaintiff's counsel and states that it is not correct. He insists that the matter was thoroughly gone into, fully explained and correctly stated by both the witness and himself. He objects to any further examination or going over of the same matter, as it was gone over in cross-examination.

Q. In answer to Mr. Brown you stated that your firm sold 200 shares of Metropolitan Traction Company stock on January 11th. Is that correct?

A. I would like to have the stenographer read it to me. I think they did. I think you will find that the 200 shares which I said were sold on the 11th were the 200 delivered on the 14th. The 200 shares sold on the 10th were delivered on the 11th; therefore they are entered in this account under the date of the 11th, that being Friday. Saturday was the 12th, Sunday the 13th and Monday the 14th.

Q. That is the way you first stated it to him.

303 A. That is the way I stated it to Mr. Brown. Did I not, Mr. Brown?

(NOTE.—After a controversy between counsel, concerning the witness' previous statement, the examination was resumed.)

Q. Look at Exhibit N and tell me when the sale in the item under date of January 11th, on Exhibit L, was made.

A. It appears from Exhibit N it was made on the 10th.

Q. Is that correct?

A. I should think so. I have no reason to doubt it.

Q. Now tell me when the sale appearing on Exhibit L, under date of January 14th, of 200 shares, was made.

A. I should say that that was made on January 11th, as per Exhibit O.

Q. You stated that on December 31, 1894, you had 500 Metropolitan Traction stock on hand for Crawford and Valentine?

A. Yes.

Q. Now the next transaction in Metropolitan Traction stock was on January 10th, was it not?

A. Yes.

Q. At the close of business on January 10th you had sold 200 shares of that 500 shares—is that correct?

A. That is correct.

304 Q. So that Crawford and Valentine would then have only 300 shares over which they had control, in your hands?

A. 300 over which they had control in our hands. They would have 200 shares over which they had no control, in our hands. Up to the time that stock was delivered we held the 500 shares.

Q. Now, at the close of business on January 11th—you having on that day sold 200 shares more—they would, on that day, have control of only 100 shares of Metropolitan Traction stock in your hands?

A. That is correct.

Q. Your firm of Dick Brothers and Company, of Philadelphia, have had no account with either Edward A. Valentine or Richard C. Crawford individually, since 1893, have you?

A. No.

Re-cross examination.

By Mr. BROWN:

Q. You have said that if you receive from a broker in another city an order to buy a certain amount of stock, you go upon the stock exchange and buy it; then if, later in the day, you receive from him an order to sell the same amount of stock, you would go upon the stock exchange and sell it; and that the two transactions would balance each other, upon your books, with the broker? That is the way I understood you to answer Mr. Burke. Was it not?

A. Yes—with that broker.

305 Q. Now I ask you: Supposing you received an order from the broker to buy a certain amount of a certain stock (he having given you that order because he had one customer who wanted stock bought) and you should receive from him at the same time an order to sell the same amount of the same kind of stock, (he giving you that order because he had some customer who wanted the stock sold,) what then would you do?

A. I can only repeat my former testimony. That is, I would do what, in stock exchange parlance, is called "I would cross the order;" I would go upon the stock exchange and record the transaction; I would then return to my office and report to the broker, "I have bought and sold for your account 100 shares of — stock at —;" I would place the transaction on one side of my purchase and sales book and the sale on the other side; I would charge his account with the purchase plus the commission and credit his account with the sale less the commission.

Q. Then, as I understand you, in that case, no stock would either come to you or be delivered by you?

A. In that case no stock would come to me or be delivered by me.

Q. If you received such an order to buy, and before you bought upon the stock exchange received from the same broker

306 (though not exactly at the same time but before you had executed your order to buy on the stock exchange) an order to sell the same amount of stock, would your course then be the same as you have indicated just now?

A. My course would be, if I could possibly do it, to do the same as I have indicated just now, in other words, to make the double commission.

Q. And without actually buying or selling the stock upon the exchange?

A. And without actually buying or selling the stock upon the exchange.

Q. So that when you told Mr. Burke that, if you received an order to buy a certain amount of stock, you would go and execute the order and then, when you received the order to sell, you would go and execute the sale order, you meant that that would be what you would do if you had bought upon the first order you received, before you received the second one, did you not?

A. Yes, sir.

Re-examined.

By Mr. BURKE:

Q. Do I understand you to say, then, that you do not always buy or sell, as the case may be, upon the order of a broker?

307 A. It depends on the nature of my instructions.

Q. Where you have two orders, one to buy and one to sell?

A. Suppose I have an order to buy 100 Metropolitan at 107 and it is selling at 108, I do not immediately execute the order. You see, it depends on the nature of my instructions. It is not for me to elucidate problems to learned counsel, but you two people are ignoring the stock exchange methods, that is all. If I had an order to buy stock at "best," I would then execute it as instantaneously as I could. If before I executed that order I received an order to sell 100 at "best," I would trade that myself naturally. There is the whole thing.

Q. Is that a usual occurrence or is it something that does not very often happen?

A. What do you mean—an order at "best"?

Q. No, but you get an order to sell and an order to buy the same kind of stock at the same time?

A. That very rarely happens. It happens sometimes.

(NOTE.—At this point a recess was taken until afternoon, when the witness was further examined as follows.)

Re-cross examination.

By Mr. BROWN:

Q. When, in the course of your examination, you have

308 given quotations of Metropolitan Traction stock at any particular day, from what did you take them?

A. They were taken either from the stock exchange official list of from the pages of the Financial Chronicle, which is the accepted authority, in our business, for quotations.

Q. What is the stock exchange official list? By whom is it published?

A. I do not know the printer. It is published under the stock exchange.

Q. Is it published by authority of the stock exchange?

A. It is published under a contract with them. They do not make any profit out of it.

Q. With the Philadelphia stock exchange?

A. A contract with the Philadelphia stock exchange.

Q. What is the Financial Chronicle?

A. The Financial Chronicle is a paper devoted to financial subjects, published in New York by W. B. Dana and Company, and is considered the accepted authority, among bankers and brokers, for quotations on stocks, monies, sterling exchange, etc.

Re-direct examination.

By Mr. BURKE:

309 Q. Are you sure that, at any time when I was in Philadelphia or elsewhere, I ever gave an order to Dick Brothers and Company to purchase or sell any stock whatever?

A. I am not sure of it. I have the impression you did but I could not be sure of it.

Q. In respect to what stock have you the impression that I gave an order to buy or sell?

A. I have an impression it was in Metropolitan Traction.

Q. Do you recollect at what time?

A. No, I cannot recollect anything more than a faint impression; which may or may not be correct. I would not think for one instant of making an affidavit that you had.

Q. You said, in answer to my question, earlier in your examination, the following. The question was, "What was the first transaction that your firm had with Crawford and Valentine in Metropolitan Traction stock." Your answer was, "It was to pay for 450 shares of Metropolitan Traction, which we received for the account of Crawford and Valentine from the firm of Valentine and McAvoy." What did you mean by saying that you paid for 450 shares? Did you mean anything more than that you transferred 450 shares from the account of Valentine and McAvoy to the firm of Crawford and Valentine?

310 A. No, it would mean only that we had owing us by the firm of Valentine and McAvoy that amount of money.

Q. A certain amount of money, you mean, do you not?

A. The amount of money mentioned by you.

Q. I did not mention any amount of money.

A. Well, then, a certain amount of money. And we had, as security against that, certain shares of stock.

Q. How many?

A. I will refer you to that account.

Q. Can't you answer it without referring to the account, after having been over it so many times?

A. Either 450 or 500 shares—(after referring to exhibit)—on examination of Exhibit L, 450.

Q. That you had on hand?

A. That we had on hand.

Q. For the account of Valentine and McAvoy?

A. (Continuing:) And we therefore paid out (which was done by an entry through our books) $48,290.49 to Valentine and McAvoy; which amount we charged to the account of Crawford and Valentine.

Q. Did you pay that amount of money or any other amount of money to Valentine and McAvoy?

A. I cannot answer whether we paid them any amount of money until I have looked to see how the account was finally closed up. I

do not suppose we did pay them that amount of money or that it was anything but a book entry.

311 Q. In other words, it amounted to nothing more than a simple transfer of that amount of shares to the account of Valentine and McAvoy?

A. That was the practical effect of it.

Q. You had that number of shares on hand at that time for Valentine and McAvoy?

A. We had, for Valentine and McAvoy.

Q. That is, on June 30th, 1894?

A. On June 30th, 1894.

Q. And that number of shares was transferred over to the account of Crawford and Valentine by your firm?

A. It was by my firm.

Q. And they controlled it after that, did they?

(Objected to as leading.)

Q. (Continuing:) Valentine and McAvoy?

A. Yes.

By Mr. BROWN:

Q. You mean by saying "controlled" that it was thereafter for the account of Crawford and Valentine?

A. It was thereafter, for the account of Crawford and Valentine, subject to their instructions.

Q. Subject to their instructions and such payments as it was necessary for them to make in order to get the stock?

312 A. That is correct—subject to the payment of our advances on them.

By Mr. BURKE:

Q. Did you hold that stock subject to the payment of those advances?

A. Well, we wouldn't give it up unless we were paid for it. If a bank loaned you money, on collateral, how would you dispose of the collateral? I could hardly answer your question.

(By Mr. BROWN:)

Q. You mean that it was in the ordinary course of the business, as has been described, that you held those shares for the account of Valentine and McAvoy, until June 30th, 1894, and that afterwards you held them for the account of Crawford and Valentine, to whose account they were transferred?

(The question is objected to as assuming something that has not been shown; also on the ground that the attorney for the defendant is telling, not asking, the witness what he means to say; and that it is improper cross examination.)

A. That is correct.

By Mr. BURKE:

Q. Referring to Exhibit L, I ask you this. Whatever stock Crawford and Valentine sold "short" appears, from this statement, to have been sold "short" does it? It is marked "short" is it not?

313 A. I should suppose it does.

Q. And on the debit side, where it is bought in, the account shows that it was bought in on account of short sales?

A. It does.

By Mr. BROWN:

Q. By which you mean that, wherever any stock was sold before an equal amount of that stock had been bought by you for the account of Crawford and Valentine, the sale is marked "short," do you not?

A. I cannot answer that yes or no.

Q. I am asking about what you meant by your answer to Mr. Burke's question.

A. I meant that where stock is sold by us which we do not have on hand, while the customer for whom we sell it is credited with the proceeds of it, yet we do not allow him any interest on those proceeds until the stock is delivered to us, and therefore, in order to enable our bookkeepers to keep the interest account properly, whenever stock is sold by us which we do not have on hand, the stock is at once marked in the book as "short." Now, that stock may come in by purchase or it may come in subsequently, by delivery, from some broker or the customer. Of course we do not know how it comes in.

Q. And you did not know, did you, so far as the sales which appear upon this Exhibit L are concerned, for whose account

314 Crawford and Valentine were selling the stock, except that they were selling it for their own?

A. We had no knowledge of anything behind them.

Q. So that you did not know, and you do not know, whether, in ordering you to sell that stock, they were attempting to execute an order given to them to sell short?

A. We would not have any knowledge upon that subject at all.

Q. You did not know anything about it?

A. We did not know anything about it.

Q. But in every case in which stock was sold, of which you were not carrying an equal amount for their account, it appears in this account as marked "short"?

A. It appears as marked "short."

By Mr. BURKE:

Q. When I (the plaintiff in this suit) was here in Philadelphia, about two years ago or so, you remember, I had some conversation in refcrence to Metropolitan Traction stock and you knew that I was interested in it at that time, did you not?

(Mr. Brown objects to the question as leading and as misstating what the witness has said.)

Mr. Burke asks to have the question stri-ken out.

Mr. Brown objects to either the question or the objection
315 stri-ken out.

(Question waived.)

Q. Do you remember having had a conversation with me, the plaintiff, about two years ago, in Philadelphia, with reference to Metropolitan Traction stock?

(The question is objected to as going over ground already traversed in the direct examination.)

A. I do.

Q. Did you know, at that time, that I was interested in Metropolitan Traction stock?

A. I did.

Q. Through the firm of Valentine and McAvoy and through Crawford and Valentine?

A. Through the Valentine firm or firms, whichever existed at that time.

Q. Do you remember whether or not I stated to you the number of shares in which I was interested?

A. I do not recall that.

Q. Did you know at that time, or did you ascertain from me at that time or from any other source, through what parties in Chicago I became interested in the stock?

A. No, I have no recollection of that.

316 Q. Did you or not know that Crawford and Valentine were acting as brokers for me, in Chicago?

A. I did.

Q. And that what stock I had was being carried by them?

A. I simply knew that they were carrying some stock for you. I did not know whether you were dealing with brokers outside of them or not, I knew nothing about it.

Q. You knew that they were carrying some Metropolitan Traction stock?

A. I knew that they were.

By Mr. BROWN:

Q. Didn't you say, in answer to Mr. Burke before, that all that you remembered about that conversation was a faint impression and that you did not wish to make an affidavit that ht had a conversation with you about Metropolitan Traction?

A. I would like to have that looked up, so that I may see what I did say.

(The answeres on this point were here read by the stenographer.)

Q. How definitely do you remember the conversation in which it appeared from Mr. Burke's statement that Crawford and Valentine had bought Metropolitan Traction stock for his account?

A. I can just remember the fact. I cannot remember any
317 special details. Where customers from other firms come to us, as they frequently do, bearing letters of introduction, we make it our business to find out in what security or securities they may be interested, so that we can give them information and post them on the course of the market.

Q. You do not know whether this was during the time of Valentine and McAvoy or the time of Crawford and Valentine?

A. I could not say unless I could find out in some way just at what period of time Mr. Burke was here.

Q. But you do not know now?

A. No, I do not remember.

Q. And you do not know for how many other people Crawford and Valentine were interested in Metropolitan Traction?

A. I have no knowledge of that at all.

Q. Nor how much they were interested for themselves?

A. I have no knowledge on that subject.

(Signed) EVANS R. DICK.

Sworn and subscribed before me this 10th day of February 1897.

WILLIAM M. STEWART, JR.,
Commissioner.

DR. *Messrs. Crawford and Valentine in Account with Toland Bros. & Co.* CR.

Date.			Date.		
1895.			1895.		
Jan. 29.	Pd. Hulin & G. *vs.* 300 Met. Trac.	$24,000.00	Feb. 4.	100 shs. Met. Tract. 100½	$10,018.75
30.	50 Met. Tract. at 92½	4,609.38		Balance	30,828.98
Feb. 1.	100 Met. Tract. at 96½	9,631.25			
4.	D'ft on acc't	2,500.00			
28.	Int. at 4 %	107.10			
		$40,847.73			40,847.73
M'ch 1.	Balance	30,828.98			
	Long 350 Met. Tract				

"PLAINTIFF'S EXHIBIT B."

DR. *Messrs. Crawford and Valentine in Account with Toland Bros. & Co.* CR.

Date.			Date.		
1895.			1895.		
M'ch 1.	Balance	$30,828.98	M'ch 14.	350 shs. Met. Tr. at 96¾	$33,840.63
14.	Int.	44.53			
	Balance	2,967.12			
		33,840.63			33,840.63
			M'ch 14.	Balance	2,967.12

"PLAINTIFF'S EXHIBIT C."

Messrs. Crawford and Valentine in Account with Toland Bros. & Co.

Dr.				Cr.	
Date.			Date.		
1895.			1895.		
M'ch 18.	D'ft a/c	$3,000.00	M'ch 14.	Balance	$2,967.12
			29.	Cash	32.88
		3,000.00			3,000.00

"PLAINTIFF'S EXHIBIT D."

Messrs. Crawford and Valentine in Account with Toland Bros. & Co.

Dr.				Cr.	
Date.			Date.		
1895.			1895.		
Jan. 29.	Pd. Hulin & G. 300 Met. Tract	$24,000.00	Feb. 4.	100 shs. Met. Tract. at 100	$10,018.75
30.	50 Met. Tract. at 92½	4,609.38	M'ch 14.	350 shs. Met. Tract. at 96¾	33,840.63
Feb. 1.	100 Met. Tract. at 96¼	9,631.25	29.	Cash	32.88
4.	D'ft on acc't	2,500.00			
28.	Int. at 4 %	107.10			
M'ch 14.	Int.	44.53			
18.	D'ft a/c	3,000.00			
		43,892.26			$43,892.26

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"JAN'Y 29TH, 1895.

Messrs. Toland Bros. & Co., Phila.

"DEAR SIRS: We confirm instructions sent by wire to-day to receive from Messrs. Huhn and Glendenning 300 shares Metropolitan Traction stock and pay them $24,000 for our account.

Very resp'f'y,

(Signed) CRAWFORD & VALENTINE,
Per J. T. KILGOUR."

"M'CH 27TH, 1895.

"Messrs. Toland Bros. & Co., Phila.

"GENTLEMEN: Enclosed please find our check for $32.88 in payment of over-draft made on you which was caused by a clerk's error of $100 in footing. Pardon our mistake.

Very resp'f'y,

(Signed) CRAWFORD & VALENTINE,
Per J. T. KILGOUR."

"JAN'Y 29TH, '95.

"Messrs. Crawford & Valentine, 118 La Salle St., Chicago, Ills.

"DEAR SIRS: Confirming your telegram of to-day, we have paid Huhn & Glendinning $24,000 and have received from them 300 shares of Metropolitan Traction, which we charge to your account.

Yours truly,

(Signed) TOLAND BROS. & CO."

"FEB'Y 4TH, '95.

"Messrs. Crawford & Valentine, 118 La Salle St., Chicago, Ills.

"DEAR SIRS: We have this day paid your draft $2,500 and charge same to your account.

Yours truly,

(Signed) TOLAND BROS. & CO."

"MARCH 18TH, '95.

"Messrs. Crawford & Valentine, 118 La Salle St., Chicago, Ills.

"DEAR SIRS: We have this day paid your draft for $3,000 which we presume is all right, we have no advice from you of the same.

"As per statement sent you last Friday, your credit balance was $2,967.12, if you find this correct, please remit us your check for $32.88 and oblige,

Yours truly,

(Signed) TOLAND BROS. & CO."

"MARCH 27TH, '97.

"Messrs. Crawford & Valentine, 118 La Salle St., Chicago, Ills.

"DEAR SIR:—We have this day received your check for $32.60 in settlement of over-draft for which please accept our thanks.

Yours truly,

(Signed) TOLAND BROS. & CO."

"PHILADELPHIA, *Feb* 13, 1897.

"Messrs. Crawford & Valentine, Chicago, Ills.

"DEAR SIR:—Upon your order we have this day sold for your account and risk:

350 Metropol. Trac. at 96¼	33,862.50
Com.	21.87
	33,840.63

Yours truly,

(Signed) TOLAND BROS. & CO."

No. 2.

Standard and Valentine in Account with Dick Bros. & Co.

Dr.					Cr.			
1898.					1898.			
June	30.	400 Shs. Standard, balance from Valentine & Blackmer	$40,000	00	July	10.	Dividend on 400 Shs. Standard	$ 800	00
July	31.	Interest at 6 %	160	00			Balance	40,360	00
			$40,160	00				$40,160	00
July	31.	400 Shs. Standard, balance	$40,360	00	Aug.	20.	1 Shs. Trans. Co. (1/2 v. 2)	$ 25	00
Aug.	27.	1 Shs. Trans. Co. at 150 & C.	150	00			Balance	40,485	00
	31.	Int. at 6 %	150	00					
			$40,510	00				$40,510	00
Aug.	31.	401 Shs. Trans. balance	$40,485	00	Sept.	5.	Draft	$ 1,000	00
Sept.	5.	10 Shs. Trans. at 117½ & C.	1,175	00	Sept.	7.	10 Shs. Trans. (1/2 v. 2)	1,000	00
Sept.	11.	10 Shs. Trans. at 110 & C.	1,100	00	Sept.	10.	Draft		
Sept.	30.	Interest at 6 %	102	00	Sept.	10.	10 Shs. Trans. (1/2 v. 2)		
			$42,862	00			Balance	40,737	00
								$42,862	00
Sept.	30.	401 Shs. Trans. balance	$40,737	00	1899.				
Oct.	1.	10 Shs. Trans. at 110½ & C.	1,105	00	Jan.	15.	Dividend 401 Shs. Trans.	$ 802	00
Oct.	25.	40 Preferred Trans. at 1 (stock at 105) & C.	1,040	00	Jan.	15.	400 Preferred Trans. (stock at 10 %, C.)	40,000	00
Dec.	31.	401 Shs. Trans. at 108 & C.	43,283	00	Jan.	16.	Cash to C. C. & B.	1,000	00
Dec.	31.	Interest at 6 %	102	00	Jan.	17.	400 Preferred Trans. (stock at 105 & C.)	42,000	00
			$45,332	00	Jan.	31.	401 Shs. Trans. at 108½ & C.	43,416	00
							Balance	44,109	00
								$45,332	00

Oct.	31.	500 Met. Trac. balance	31 323 80	Oct.	31.	350 Peoples Traction, short	
Nov.	30.	Interest at 3½ %	147 21			Balance	31 471 01
			31 471 01				31 471 01
Nov.	30.	500 Met. Trac. balance	31 471 01	Nov.	30.	350 Peoples Traction (short)	
Dec.	18.	200 Peoples Trac. (a/c short) at 54 & C	10 812 50	Dec.	20.	Cash to D. B. & L.	3 000 00
Dec.	19.	50 do. at 54 & C	2 703 13			Balance	48 917 59
Dec.	20.	100 do. at 52¾ & C	5 281 25				
Dec.	26.	Cash from D. B. & L.	1 500 00				
Dec.	31.	Interest at 3½ %	149 70				
			51 917 59				51 917 59
Dec.	31.	500 Met. Trac. balance	48 917 59				
1895.				1895.			
Jan'y	9.	Cash a/c Yorkshire terrier for R. C. Crawford	125 00	Jan.	11.	200 Met. Trac. at 100¾ L. C.	20 137 50
Jan'y	9.	Cash a/c express on terrier	2 20	Jan.	14.	200 Met. Trac. at 101½ L. C.	20 287 50
Jan'y	12.	Cash to Dick Bros. & L.	1 200 00	Jan.	15.	Dividend 500 Met. Trac.	625 00
Jan'y	28.	50 Met. Trac. at 96 & C.	4 803 12	Jan.	28.	50 Met. Trac. at 94¼ & C.	4 709 38
Jan'y	28.	150 Met. Trac. at 97 & C.	14 559 37	Jan.	28.	50 Met. Trac. del'd Toland Bros. & Co.	4 700 00
Jan'y	28.	150 Met. Trac. at 98 & C.	14 709 37	Jan.	28.	Cash by check	4 000 00
Jan'y	30.	Draft	1 500	Jan.	29.	300 Met. Trac. at 90¼ L. C.	27 018 75
Jan'y	31.	Interest at 3½ %	77 17			Balance	4 415 69
			85 893 82				85 893 82
Jan'y	31.	50 Met. Trac. balance	4 415 69	Feb.	4.	50 Met. Trac. at 100 L. C.	4 996 88
Feb'y	5.	50 Met. Trac. at 99 & C.	4 953 12			Balance	4 383 36
Feb'y	28.	Interest at 3½ %	11 43				
			9 380 24				9 380 24
Feb'y	28.	50 Met. Trac. balance	4 383 36	Mar.	14.	50 Met. Trac. at 96¾ L. C.	4 834 38
M'ch	29.	50 Met. Trac. at 93 & C.	4 653 12	Mar.	28.	Draft	500 00
M'ch	29.	50 Met. Trac. at 92½ & C.	4 628 13			Balance	8 338 09
M'ch	31.	Interest at 4 %	7 86				
			13 672 47				13 672 47

M'ch	31.	100 Met. Trac. balance	8 338 09	Ap'l	1.	Draft	1 000 00
Ap'l	18.	Draft	1 500	Ap'l	15.	Dividend 100 Met. Trac	125 00
Ap'l	30.	Interest at 4%	13 46	Ap'l	17.	100 Met. Trac. at 89½ L. C	8 943 75
		Balance	217 20				
			10 068 75				10 068 75
May	21.	Cash to general acc't	217 20	Ap'l	30.	Balance	217 20

E. & O. E.

DICK BROS. & CO.

21—247

No. 1.

Dr. *Chicago Title and Trust Company, Receiver of Crawford & Valentine, in Account with Crawford and Valentine.* Cr.

Ap'l	30.	Balance	236 79
May	7.	Gain 15m Sept. wh't	353 13
			589 92

321 JANUARY 4TH, 1901—10 o'clock a. m.

Court met pursuant to adjournment.

JOHN E. BURKE, the plaintiff herein, having been recalled on his own behalf, was further cross-examined by Mr. Brown, and testified as follows:

Q. Mr. Burke, you spoke about going to the office of Crawford & Valentine and there demanding that the stock be delivered to you, and that you would pay the money. That was upon the 21st day of May, was it?

A. You assume in your question something that I did not say.

Q. Then correct it. I did not have any intention of doing so. What did you do?

A. I said I went to defendants' office on the morning of May 20th, 1895, and gave an order to have my Metropolitan Traction stock sent on from Philadelphia to this place, to be taken up here and paid for. That is what I said.

Q. And at that time had you heard that the firm of Crawford & Valentine had failed?

A. No, sir, I had not.

Q. What had you heard about it that induced you to go there?

A. I heard that there was some difficulty between the partners; what it was I was not able to learn, and did not learn, but

322 that there was some difficulty or trouble between the partners over financial matters.

Q. Mr. Burke, when you got there didn't you find an agent of the Chicago Title & Trust Company as receiver in there?

A. No, sir, he was not there; he did not come there until between 11 and 12 o'clock that day.

Q. What time were you there?

A. I was there about 9 o'clock in the morning.

Q. Who did you say that you talked with?

A. J. H. Larue, there, and talked with him.

Q. Who was he?

A. He is an employee in their office and was their telegraph operator, who transmitted orders for the purchase and sale of stock.

Q. Who was he?

A. You asked me who he was, and I am telling you.

Q. You talked with him before you gave that order, wrote that order, didn't you?

A. I talked with him when I gave the order, of course.

Q. Didn't he tell you of the failure of the firm, and that a receiver had been appointed?

A. Not until after that. He never told me that that firm had failed and a receiver had been appointed, no, sir.

Q. What did he tell you at the time you gave this order?

A. At the time I gave this order he said he would send it, and requested me to write out the form of an order to be sent on to Tolman Brothers & Company and Dick Brothers & Company.

323 Q. Who requested that?

A. He requested me to write out the form of the order which he was to transmit to them to have that stock sent on.

Q. Did you receive from the receiver a statement of account?

A. From the receiver? I received a statement of purchases and sales of Metropolitan Traction stock.

Q. Have you got it?

A. Sir?

Q. Have you got that?

A. Not here, no, sir. I received a statement of purchases and sales of Metropolitan Traction stock. That is the only statement I received. I did not receive it from the receiver. I received it from J. T. Kilgore, who, I understood, was appointed by the receiver, by the representative of the receiver, to help close up the affairs of the firm.

Q. They had, I think, as you explained, an item, an entry, purporting to show a closing of the account.

A. No, sir.

Q. Of the sale of stock?

A. No, sir, no, sir, no, sir.

Q. What did you say about that? Didn't you say that the receiver did undertake to make an entry, that you were closing the account and showing the sale?

A. I said nothing about that that I remember.

Q. I think you said something about that. Is that the fact?

A. The books, the ledger, my account on the ledger, shows that it was closed by the receiver.

324 Q. Where is that ledger? (Ledger is produced.)

A. In my direct examination I said nothing about the closing of my account that I have any recollection of.

Q. I think you did, Mr. Burke, but it is in relation to the damages. Your ledger account is on page 585 of this ledger?

A. Yes, sir.

Q. This is the account which you say is it?

A. Yes, sir.

Mr. BROWN: I would like to offer that page of the ledger in evidence, your honor, in connection with this cross examination. With that, as far as I am concerned, I am through.

Mr. PENCE: We object to it.

Mr. BURKE: It is hardly time on cross examination for them to introduce evidence. We have not introduced the books at all yet.

Mr. BROWN: On cross examination.

The COURT: You read from them all day.

Mr. BURKE: But we have not introduced them, any of them.

The COURT: But you said on direct examination that you knew certain things that occurred by reason of the fact that they appeared in the books.

Mr. BURKE: And they cross examined me in regard to those entries.

The COURT: And you cited the books as corroborative of the things you said occurred.

325 Mr. MORAN: Of course they can offer them when they call their witnesses.

Mr. BROWN: It avoids a little trouble. I do not propose to cross examine Mr. Burke any further upon it. I would like to introduce his ledger account in this ledger, pages 528 and 585.

Mr. PENCE: I simply object to it until the time comes to offer the ledger. I don't think it is proper here on cross examination.

Mr. BROWN: I would like to offer them in connection with the cross examination. Mr. Burke has referred to the account several times.

The COURT: He stated on the direct examination that he had personal knowledge, and on cross examination it appeared that his personal knowledge was derived from the books. He introduced certain portions of the book to show that. I think that is competent.

Mr. BROWN: I introduce pages 528 and 585 of this ledger which contains the account of John E. Burke.

Mr. PENCE: Have you shown by the witness that it is correct, or anything of that kind?

Mr. BROWN: They are the books of Crawford & Valentine. This balance here is $7404.52; and also the sales there. I have no objection to his stating.

Mr. PENCE: I think you ought not to offer that which has
326 been entered in afterwards. You ought to make the exception yourself of anything that has been entered after it passed out of the hands of Crawford & Valentine.

The COURT: I don't think the entry of the receiver has anything to do with the matter.

Mr. BROWN: Certainly it does not affect the rights of the parties; I admit that.

Mr. PENCE: I object to the introduction of it particularly because there are entries there made subsequent to the failure.

The COURT: I will sustain the objection.

Mr. BROWN: I will omit the entries upon May 22nd. He has himself testified on direct examination that the receiver made a book entry closing the account.

The COURT: In his direct examination?

Mr. BROWN: Yes.

The COURT: What is your recollection about that?

Mr. PENCE: Mr. Burke knows; I do not recall it.

The WITNESS: I am disposed to think that I did say so.

The COURT: That makes it competent then. That is, the matter referred to.

Mr. BROWN: This account, these red ink entries of Mr. Burke, upon page 585, of the date of May 21st, were, as we understand, made by the receiver, were they not?

A. That is what I understand.

327 Mr. PENCE: The red ink, of course, will not go into the record.

Mr. BROWN: All the entries of May 21st,—all entries subsequent to May 13th.

The WITNESS: That is what I understand.

Mr. PENCE: Were made by the receiver.

Mr. BROWN: Were made by the receiver. It is admitted by the counsel for the defendants that the entry of May 21st, in the account of John E. Burke, which appears as follows: "May 21, 5500 Met. Trac. 95 $52,181.25," was made by the receiver, and that it does not represent an actual sale of Metropolitan Traction stock, but is an entry made by the receiver for the purpose of closing the account, in which he took the market price of the stock at that date and credited Mr. Burke with it.

Mr. PENCE: You admit also that there was no stock on hand of the Metropolitan Traction Company at that date?

Mr. BROWN: I don't know. What you have proven is your case.

Mr. PENCE: Well, but you do not contest the question that all that stock had been disposed of?

Mr. BROWN: I certainly do contest the question that there was any stock to dispose of.

Mr. PENCE: Then you can easily admit there was nothing on hand of the Metropolitan Traction Company's stock.

328 Mr. BROWN: There was not any stock. Crawford & Valentine never had any stock, nor Mr. Burke either.

Mr. MORAN: Crawford & Valentine didn't have any, but Mr. Burke had some.

Mr. BROWN: You don't expect me to admit upon the record your theory of the case?

Cross examination.

By Mr. VROOMAN:

Q. I want to understand, Mr. Burke, more clearly about the nature of the transactions in the beginning; how you ordered your stock, how you paid for your stock, if you paid for it. Take the 450 shares of Metropolitan stock that was on hand at the time this firm was organized.

Mr. MORAN: I object to that question because it has nothing to do with the parties, how he got it originally, whether it was in the hands of McAvoy & Valentine and Jamieson & Co.

The COURT: They have a right to ascertain whether or not as a fact the stock was there at that time.

Mr. MORAN: Oh, well, if that is all.

Mr. VROOMAN: Will you explain how that came to be?

A. How the stock came to be?

Q. Yes.

A. Came to be what?

329 Q. Came to be yours, as you claim. How did you order it?
A. I bought it.
Q. You placed an order for it, didn't you, with somebody?
A. I did.
Q. With whom?
A. I placed the order first with Valentine & McAvoy to buy this stock for me.
Q. That is, you went into their office and told them to buy 450 shares of Metropolitan stock for you; is that it?

Mr. MORAN: I object to that question as entirely immaterial.
Objection overruled.

A. Yes, sir, I went into their office and I gave them an order to buy at different times Metropolitan Traction stock for me which amounted—the number of shares which they bought for me on my order amounted to 450.

Mr. VROOMAN: Amounted to 450 shares?

A. 450 shares Metropolitan Traction stock, which they purchased for me through their correspondents, Dick Bros. & Co., of Philadelphia.
Q. Now you knew that it was purchased by them through Dick Bros. of Philadelphia?
A. I did.
Q. Now you paid nothing, as I understand, when you made that order?
A. You don't understand correctly.
Q. Did you advance them anything to buy that stock with when you gave them the order?
A. I did.
Q. For what purpose?
A. For the purpose of paying on that stock, making a payment, what they called a margin.
330 Q. You put up what was called a margin; that was a small proportion of the amount. How much on a hundred?
A. I don't remember now the amount.
Q. How much on a share?
A. I don't remember now.
Q. You can give us some idea, can you not, Mr. Burke?
A. I can not remember whether it was $1,000 or $2,000 that I first paid them, and I kept paying them money from time to time on this stock.
Q. You margin the stocks?
A. Well, that is what it was called, a margin. It was a payment on the stock.
Q. Now of the principal sum due on the stock you made no payment?
A. I did.
Q. Except as margins?

A. And they made credits on their books for it. I supposed I got credit.

Q. I mean did you take any money into your office to pay in the principal sum that was due on this stock or did you make your payments credits that came to you on their books through various transactions?

A. I will tell you just how I paid it. I paid a certain amount of money as margins and payment on the stock which I ordered them to purchase for me.

Q. Those you call payments on margins, do you not?

Mr. MORAN: No matter what they are called; that makes no difference.

Mr. VROOMAN: Yes, I think it does.

331 A. I know what I call them. I don't know what you would call them, or what somebody else would call them.

The COURT: Not what you would call it; what did you call it? What did you say and what did they say?

A. I paid them so much money on the purchase; whether the word "margin" was used, or it was called margin, I don't now remember; but I know I paid so much money on the transaction.

Mr. VROOMAN: Mr. Burke, you knew it was to margin the stock, didn't you?

A. I did.

Q. It was not necessary to talk about it; you knew it?

A. That was my understanding of it.

Q. Now from time to time you were requested to put up some more money to margin it, were you not, as the stock went down?

A. I did put up more; I don't know as I was required to.

Q. You did that to margin the stock?

A. To margin and pay on the stock.

Q. You were called upon to pay margins?

A. I say I do not remember whether I was called upon, but I know I did pay further moneys as margins on that stock, and as payment on the stock that I purchased through them.

Q. Those payments were made in small sums, were they not?

A. Not very small sums.

Q. Well, one or two thousand dollars?

A. I don't call those small sums, do you?

332 Q. Yes, relatively. They would be large sometimes. Relatively they were small as compared with the amount of the indebtedness?

A. Yes, sir.

Q. The indebtedness was something like between $40,000 and $50,000 for that stock?

A. What was that?

The COURT: For the full price of the stock?

Mr. VROOMAN: For the full price of the stock.

A. I bought it at different times and in different amounts.

Q. Do not quibble about it. The whole indebtedness for that stock amounted to between $40,000 and $50,000?

A. Yes, sir.

Q. Now you kept track of the market, didn't you, yourself?

A. Sir?

Q. You kept track of the market, didn't you, yourself?

A. I did look after it.

Q. And you noticed whether it was necessary to margin your stock, didn't you?

A. I have no recollection about it now, Mr. Vrooman.

Q. And when you paid money in, if you did, from time to time, you did it with a view of margining the stock, didn't you, in accordance with the market, all the time?

A. I did it with a view of margining and paying for the stock as I had the money.

Q. Well, put it that way. Now the bulk of this indebted-
333 ness was due at the time of the transfer from the old firm to the new, wasn't it?

A. What?

Q. This indebtedness was due, if we call it an indebtedness, at the time of the transfer of the account from the old account to the new?

A. There was a certain amount of indebtedness from me to the firm of Valentine & McAvoy at the time of their dissolution and at the time of the formation of the new firm of Crawford & Valentine.

Q. Nothing was paid at that time, at the time of the transfer?

A. Just at that time?

Q. Yes, sir.

A. No, I have no recollection of anything being paid.

Q. And the whole transaction was a book transaction between the new firm and the old, and between you and the new firm? It was entirely a book transaction?

A. I do not so understand.

Q. No money was paid at that time?

A. No money was paid by me at that time.

Q. No money was paid to the new firm by the old, was there?

A. I don't know that there was.

Q. This stock that you bought from time to time while you were dealing with McAvoy & Valentine, this stock remained in the possession of Dick Brothers of Philadelphia, as I understand?

A. Well?

Q. If there was any stock purchased it remained in the possession of Dick Brothers, did it?

334 A. That was my understanding, that it was held there by Dick Brothers & Company in Philadelphia for Crawford & Valentine.

Q. It was held by Crawford & Valentine, as I understand your

testimony, and the deposition read, Dick Brothers knew nothing of you in the deal at that time?

A. At that time I don't think they knew anything about me.

Q. That stock was held by Dick Brothers as collateral to the indebtedness of McAvoy & Valentine, was it not?

A. That is my understanding of it.

Q. That is, they didn't pay for the stock either; they ordered it purchased by the Philadelphia brokers?

A. They ordered it purchased by the Philadelphia brokers.

Q. And the Philadelphia brokers bought it and held it, we will say, as collateral to an indebtedness which McAvoy & Valentine owed them on the stock?

A. I don't know.

Q. You so understood it, didn't you?

A. My understanding of it was that the stock was held there by Dick Brothers & Company.

Q. Answer my question. It is very simple.

A. Evidently you want me to say something that I do not know.

Q. No, I don't.

A. I beg your pardon.

Q. Didn't you understand all the time that the stock was held by Dick Brothers as collateral to an indebtedness owing to Dick Brothers by McAvoy & Valentine?

335 A. I have said that yes, before. I said that before.

Q. Now the transaction after the change from the old firm to the new, continued to be the same, didn't it, in character? There was no difference in the manner in which the business was done, as far as you know?

A. I don't know whether the business was done by the new firm exactly as by the old firm or not.

Q. I do not say exactly. I say the general character of it, and the business generally ran——

A. I can tell you how I understood the matter was after the transfer.

Q. There was no substantial change in the manner of doing the business after the transfer to the new firm as it was done by the old?

A. I don't understand what you mean, or understand by the manner of doing the business.

Q. The manner in which the stock was held.

A. I understand the stock was held by Dick Brothers & Company for Crawford & Valentine after the transfer of the stock from Valentine & McAvoy to Crawford & Valentine.

Q. And the same indebtedness was carried along over against the new firm by Dick Brothers & Company.

A. That I knew nothing about.

Q. That you understood?

A. I didn't understand anything about it whatever.

Q. That was the fact, wasn't it?

A. I see from the books——

336 Q. What I am getting at is this: This stock all the time during this transaction was held there by Tolman Brothers or Dick Brothers as collateral to an indebtedness of Crawford & Valentine for the stock?

A. The Metropolitan stock which Dick Brothers & Co. had and the Metropolitan stock which Tolman Brothers & Co. had for Crawford & Valentine, I understood to be held there in Philadelphia.

Q. As collateral to the indebtedness of Crawford & Valentine to one of those firms?

A. I supposed that they held it as security for whatever Crawford & Valentine might owe them; and as to the amount, I know nothing about it.

Q. That is the stock in which you claim an equity in yourself?

A. It is stock that I claim to own.

Q. That stock was not segregated by any other stock or certificates, was it?

Objected to.

A. I don't know.

Q. You never——

The COURT: I think he has already testified that he never saw the stock, and does not know its number, and does not know the date of the certificates.

Mr. VROOMAN: Well, that covers that.

Q. Now I understand you had a running account with McAvoy & Valentine during the time you were dealing with them?

A. Dealing with whom?

337 Q. McAvoy & Valentine.

A. Valentine & McAvoy, you mean.

Q. Yes, sir.

A. I had an account with them.

Q. A running account?

A. A running account, I suppose,

Q. In which you were debited and credited with moneys you paid in and credited up with stocks bought by you, whatever it might have been, and charged up with indebtedness on the stocks in the same manner as the books were kept?

A. My account I suppose shows a debit and credit.

Q. The same as in the case of this later firm of Crawford & Valentine?

A. I don't know that it was just the same, no, sir.

Q. Oh, Mr. Burke,—I mean substantially the same. It ran along the same?

A. With all debits and credits with both firms, but whether it was substantially the same, you cannot get me to say that, because I don't know.

Q. We won't quibble about it.

A. Well, put your questions so I can answer them from correctly from what I know, and I will do so.

Q. Now you had monthly reports from the old firm, did you?
A. I did.
Q. And you had monthly reports from the new firm of Crawford & Valentine?
A. I did.
Q. From the time it organized up to the time it failed, or nearly so?
A. Yes, sir.
Q. So you knew each month how your account stood?
338 A. Yes, sir.
Q. A part of those monthly accounts you have here in court?
A. Yes, sir.
Q. You have not them all?
A. No, sir.
Q. You were noticed, weren't you, to produce them all?
A. No, sir.
Q. Weren't you served with a notice by myself to produce all the monthly accounts with the old firm or with the new?
A. No, sir, I was served with notice to produce my accounts with Valentine & McAvoy.
Q. Have you produced them?
A. No, sir.
Q. Have you them with you?
A. No, sir.
Q. Where are they?
A. I think they are in my office.
Q. You were notified to produce them?
A. I was notified to produce my accounts with Valentine & McAvoy.
Q. That is the monthly statements?
A. I have forgotten now the wording of the notice.
Q. Why haven't you brought them with you?
A. Simply I have not brought them because I do not think they are competent evidence in this case.
Q. That is for the court to rule on.
A. Yes, or that you would introduce secondary evidence of the contents.
Q. Then you refuse to produce them here, do you?
A. I do not.
339 Q. Will you produce them?
A. I do not say that I will, until the question is settled by the court whether I am compelled to produce them. Without an order of court I shall not produce them.
Q. Now it appears by depositions——
Mr. MORAN: I understand these accounts relate to the accounts of McAvoy & Valentine?
A. Valentine & McAvoy.
Q. Which have been spoken of?
A. Yes, sir.
Q. And not to Crawford & Valentine?

A. Not the accounts in this case.

Mr. PEECK: We have produced six monthly statements in the case of the defendants Crawford & Valentine.

A. We have produced the monthly statements of account rendered to me for the months of October, November and December, 1894, and January, February, March and April, 1895. The accounts which Mr. Vroman spoke of now as requiring me to produce are my accounts with Valentine & McAvoy, which have nothing to do with this case whatever.

The COURT: The examination is being conducted by Mr. Vroman first in relation to the McAvoy matter, and secondly in relation to the Valentine & Crawford. The last questions related to Crawford & Valentine, but you have produced all those except those of July and August?

Mr. PEECK: I believe so.

340 The COURT: You started dealing with the new firm in July?

A. July.

The COURT: He has produced them all except July and August.

A. And September.

Q. And September?

A. No, that is right, July and August.

Mr. PEECK: How high had the market price of Metropolitan Traction stock been May 20th, 1895?

A. 287.

Q. What is the market price now?

A. Upwards of 170.

Q. At the time they called upon you for the margin of $200 do I understand you to say that they did not have any stock on hand for yourself, that they had disposed of all of it prior to that time?

A. All, with the exception of 50 shares. That is the only Metropolitan Traction stock on the first day of April. That is the only Metropolitan Traction stock the defendants had in their possession or under their control belonging to me or anybody else.

Mr. MORAN: You or anybody else; that is all they had?

A. Yes, sir.

Mr. PEECK: I will read in evidence the deposition of Evans H. Black. I offer this deposition, and all the exhibits referred to or identified therein, and if I did not offer yesterday I will now read depositions which I have read of Mr. Drayton, all the exhibits therein cited and attached thereto.

Said depositions and exhibits are as follows:

341 WILLIAM C. NEILSON, called as a witness on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. Burke and testified as follows:

Q. What is your name and business?

A. William C. Neilson, vice-president of the Chicago Title & Trust Company.

Q. Do you remember about the time that the firm of Crawford & Cantine, in this city, suspended payment?

A. I remember the circumstance, yes.

Q. Were you an officer of the Chicago Title & Trust Company at that time?

A. I was.

Q. Was the Chicago Title & Trust Company appointed receiver in the case of the defendants Crawford & Cantine?

A. Yes, they were appointed receiver of Crawford & Cantine.

Q. State, Mr. Niblack, how and by whom and under whose direction was the accounting the books of Crawford & Cantine made after the receiver took possession?

A. We were principally. Under my charge and by the receiver.

Q. Did you employ anybody to assist you in closing up the accounts?

A. Yes, sir, we employed Mr. Joseph Kilgore and a young man by the name of Campbell, was it, or something of that kind.

Q. James J. Campbell?

A. Yes, sir, James J. Campbell. They were at work for Crawford & Cantine.

Q. Do you know Charles L. Boyd?

A. I know Charles L. Boyd.

Q. Who was he?

A. He was at that time an assistant in the trust department of the Title & Trust Company.

Q. Did he have anything to do with the closing up?

A. Yes, sir, I put him in charge of it to superintend the closing of it.

Q. At the time of the suspension or failure?

A. Yes, sir.

Q. State whether there was any kind of theft among the assets of Crawford & Cantine turned over to the receiver.

A. No, there was none.

Q. State the total amount of claims filed with and allowed by the master?

Objected to by counsel for defendants as immaterial.

Mr. Bogue: We wish to show the financial condition of the defendants at the time of their failure. We wish to show their financial condition as bearing on the question of the solicitations and acting on the question of intent.

The Court: The financial condition at the time of the failure could not be in issue. These transactions as much you claim were six or eight months before that.

Mr. Bogue: Taken in connection with other evidence [illegible]

Mr. Bogue: We wish to show at the time of the transaction had with the defendants in this case the defendants were insolvent, which is a very important thing in this case.

The Court: This question need not be asked it.

Mr. Bogue: I would like to have that in as an important element in this case, that the defendants were insolvent.

Mr. PENCE: We consider it a very important branch at the time.

The COURT: Not at the time of the failure.

Mr. PENCE: If we establish insolvency at one time and then show their condition prior to that time it tends to show they were insolvent at this time. There was some period of time when they became insolvent, and this is a starting point. Now if we can trace that back to the very beginning of their transaction January 29th, 1895.

Mr. BURKE: That they were insolvent on the 6th day of July, and they kept increasing and increasing and increasing.

The COURT: I will sustain the objection.

Mr. MORAN: It will save time if you admit it.

Mr. BROWN: Mr. Burke would deny that they were insolvent at all.

The COURT: I sustain the objection. I think it is incompetent to show what their condition was at the time of the failure.

344 Mr. MORAN: The offer is to prove this at this time, and prove by other evidence in connection with it that they were insolvent at the time of this transaction.

The COURT: Their is a proper way to prove their insolvency at the time of the sales.

Mr. MORAN: Not only at that time, but at the time of this occurrence. They were always insolvent at all times.

The COURT: I will let you prove that, but I don't think their insolvency May 20th, the year following, would indicate that.

Mr. MORAN: The amount of indebtedness against their estate proved up tends to show their indebtedness at that time, the fact of the creating of the indebtedness. We will show their condition at that time as compared with their assets. It is only a remote way of proving insolvency. Insolvency like any other fact can be proved by any evidence tending to show it and competent to show it. We want to prove up the indebtedness proved against them at a certain date, and take that indebtedness and carry it back. It is only a step along from the starting point. That is the only reason that I think it is competent, your honor. Standing by itself it is of no consequence at all.

Mr. PENCE: Suppose this indebtedness they owed at the time of the failure was created prior, and that alone made them insolvent.

345 The COURT: Do you expect to prove that?

Mr. PENCE: Yes, your honor.

Mr. BROWN: I don't see how it is competent as bearing on this question.

The COURT: It may show or fail to show they were actuated by fraudulent intentions at the time of the transactions.

Mr. BROWN: What has that to do with it? Suppose as a matter of fact that disastrous speculations had taken place two days or three days before this failure, or two weeks or three weeks, what effect would it have? The whole history of this firm undoubtedly at the time was very largely solvent when they were on the right side of the market, and when they were speculating they were unfortunately

insolvent. Now, suppose they prove that they were solvent at this day, solvent one day and insolvent the next, as frequently happens.

The COURT: Counsel states that he expects to prove the indebtedness existing at the time of the insolvency was long prior existing.

Mr. BROWN: Then we will have to put in all the books and transactions of this firm from the beginning. These gentlemen won't for one moment claim that they are going to do that.

The COURT: Upon the promise of counsel let him answer.

Mr. BURKE: We will show it.

Mr. BROWN: Then we have a right to go into other transactions of theirs to contradict it.

346 Mr. BURKE: State the total amount of claims filed with and allowed by the receiver.

A. The total amount?

Mr. BROWN: I thought the objection to that was sustained.

The COURT: Upon the statement of counsel that they expect to prove that the indebtedness existing at the time of the failure was indebtedness existing prior to these transactions I will let him answer.

To which ruling of the court the defendants, and each of them by their counsel then and there duly excepted.

A. It is about $140,000.

Mr. BURKE: I wish you would give the exact figures.

A. I could not do it without referring.

The COURT: That is near enough.

Mr. BURKE: He can do it right there.

Objected to by counsel for defendants.

A. $142,089 I think was the amount of the indebtedness.

Q. What was the amount?

A. That was the amount I think. Yes, sir, that is my best recollection as refreshed by this report.

Q. Does that report show that?

A. Yes, sir.

Q. State what was the total amount realized by the receiver out of the assets of Crawford & Valentine?

Mr. BROWN: All this is objected to by counsel for defendants.

To which ruling of the court the defendants, and each of
347 them, by their counsel then and there duly excepted.

A. It was about $25,000.

Mr. BURKE: I wish you would give it exactly.

A. I can by referring to the papers. (Witness refers to paper.) $25,917.

Q. That was the total amount?

A. *If* the receipts.

Q. Realized by the receipts?

A. Yes, sir.

Q. What is the total amount of the disbursements made by the receiver?

A. We disbursed ultimately all of that money.

Q. What per cent. was paid by the receiver as dividends to the creditors on claims filed.

The COURT: That is immaterial whether it was well managed or mismanaged.

Mr. BURKE: State whether there were any bad or uncollectible accounts among the assets?

A. Yes, sir, several.

Q. What amount?

A. About $75,000.

The COURT: When you spoke of $25,900 is that the amount of assets collected in cash?

A. Yes, sir.

Q. He said the assets were $26,000?

A. Yes, sir.

Mr. BURKE: Now I want to show the bad and uncollectible accounts.

The COURT: I don't suppose they will object to that. You can go into that.

348 Mr. BROWN: No.

A. $75,888.

Mr. BURKE: Bad and uncollectible debts?

A. Yes, sir.

Q. Give the names of the parties and the amounts.

The COURT: Is that material?

Mr. BURKE: We want to show by the ledger and trace it right through.

A. This is the list of them which is here, marked Exhibit A.

Mr. BROWN: He wants to prove there were assets, and then he is going to show that we couldn't collect them.

The COURT: Do you object?

Mr. BROWN: No, I do not object.

A. This is a list of them, Schedule A here?

Mr. BURKE: Read that, the names and the amounts.

The COURT: Put it in evidence. That is the quickest way.

Mr. BURKE: The names and amounts.

A. J. T. Kilgore, $836.73; Dick Brothers & Company $217.20.

Mr. BROWN: Is that uncollectible?

A. It was uncollectible not because of the insolvency of the parties or inability to pay, but because they disputed the amount, and these were accounts appearing upon the face of the books of Crawford & Valentine. W. F. Leland, $1200; O. C. Eager, $960.77; B. F. Kendall, $711.50; I. Hodson, $45,430.63; James T. Watkins, $3809.75; Frank Lynch——

The COURT: Is that Joseph R. Wilkins?

349 A. Yes, sir. That is Joseph R. Wilkins. The account on its face stood Watkins.

Mr. BROWN: When did it stand so?

Mr. PENCE: Let him finish first.

A. Frank Lynch, $9,016.39; Hodson & Salisbury, $2550.95; Wilkins & Hodson $674; P. E. Stanley, $5,135; E. S. Mills, $623; James J. Johnson $150; B. F. Haddock, $1108; C. P. McAvoy, $2537.88; S. B. Barker $530.64; E. Cook, $54.82; Marshall Babcock $7.50; E. B. Martin $225.57.

Mr. BURKE: What was finally done by the receiver with the bad and uncollectible accounts?

A. Sold under an order of court.

Q. Were they advertised?

A. Advertised as provided by the order of court and put in the papers and sold.

Q. For what were they sold?

A. $100 cash. They were advertised and sold for $100 cash.

The COURT: All these accounts?

A. Yes, sir.

Mr. BURKE: Who rendered the bills for the legal services performed for the receiver and by whom were the said bills paid?

A. Flower, Smith & Musgrave, I think, were the attorneys.

Q. I wish you would step here and look at the account of John E. Burke and state how that account was closed by the receiver?

A. I ordered the price at the close of business on the day of the failure——

350 Q. Price of what?

A. The price of stock, bonds, to be taken as the price at which the items should be entered in the separate accounts, and the books closed.

Q. Take this account.

A. That was closed in that way. I ordered the entry to be made in red ink. The account of John E. Burke.

The COURT: You credited Mr. Burke's account with the value of that sort of stock at the close of business that day?

A. Yes, sir, merely for the purpose of getting at a balance.

Mr. BURKE: There was no sale of the stock?

A. No, sir, there was no sale of the stock.

Mr. PENCE: Didn't have any on hand?

A. No, sir.

Q. None turned over?

A. No.

Cross examination.

By Mr. BROWN:

Q. In the red ink here, James R. Watkins, it stood in the ledger in the name of James R. Watkins. When did it first stand in the ledger in the name of James R. Watkins?

A. Mr. Brown, I wouldn't say that. The first time I ever saw the account it was in the name of James R. Watkins.

Q. When was that?

A. Three or four days after the failure, but it had been badly erased as you can see at the time, and whether it was done
351 after the books came into my hands by Mr. Kilgore or by Mr. Campbell, or whether it had been done before that I cannot say.

Q. But it was evidently an account which stood Joseph R. Wilkins?

A. Oh, yes. We had interviews with Mr. Wilkins about it.

Q. Mr. Wilkins admitted it was his account?

A. He never did to me, Mr. Brown. I think he did, but he never did to me.

Q. He was the caller on the stock exchange of Chicago?

A. Yes, sir.

Q. It was against the rules of the stock exchange that he should trade?

A. I am not familiar with the rules of the stock exchange. I was not a member of it.

Q. Well, it was?

A. I have understood so. It is outside of my knowledge.

Q. Did you find in the books which came into your hands an account of the wheat deal which Mr. Crawford, of Crawford & Valentine, was in shortly before the failure?

A. I think so. I closed up some transactions with Baldwin & Farnum, I think, but I don't recall the details of them at all at the present time.

Q. Do you remember they were shortly before the failure?

A. Yes, sir, and some existing at the time of the failure. Some existed at the time of the failure.

Q. And that you remember also that those deals showed a very considerable loss, thirty or forty thousand dollars?

352 A. I could not state that. I think there was a loss, but I couldn't state it.

Q. Don't you know it was a very large loss compared to the whole amount of liabilities here, assets and so on?

A. In a general way I do, yes, but I don't know the details about it.

Recess to 2 o'clock p. m.

Court re-assembled at 2 o'clock p. m.

ERNEST RICKETT, called as a witness on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. Burke and testified as follows:

Q. What is your name?
A. Ernest Rickett.
Q. Where do you reside?
A. In Chicago.
Q. How long have you resided in the city?
A. Almost ten years.
Q. Are you connected with any firm?
A. I am.
Q. With what firm?
A. I am a member of the firm of Smith, Rickett, Clarke & Company.
Q. What was your business?
A. Certified public accountant.
353 Q. What is the business of your firm?
A. Certified public accountants.
The COURT: What do you mean by certified public accountants?
A. The term certified public accountant means that we have passed all necessary examinations made by the State of New York for that profession.
Mr. PENCE: In other words, you are a professional accountant?
The COURT: He says they are certified. I wanted to know what he meant by certified. It appears they have some law for accountants in New York?
A. Yes, sir.
Mr. BURKE: That means expert accountants?
A. Yes, sir.
The COURT: Qualified in the State of New York?
A. Yes, sir.
Mr. BURKE: Have you a diploma to that effect?
A. Yes, sir.
Q. How long have you had that?
A. I think the law was passed four years ago, and I have had the diploma ever since the law was passed.
Q. Have you been engaged in that business continually for several years past?
A. For almost ten years I have been.
Q. Have you examined the account books of Crawford & Valentine with a view to ascertain their financial condition on the 31st day of December, 1894?
A. I have.

Mr. BROWN: I object. That is preliminary, but I don't
354 think it is competent evidence. I object to the materiality of the evidence and the competency of this witness. We have no opportunity to know on what basis he proceeded.
The COURT: You will have an opportunity on cross-examination.

This brings it down to within a few days of the time when they claim there was a fraudulent disposition of the stock.

Mr. BROWN: It does not prove knowledge on the part of the defendants even if they were insolvent as shown by the evidence. Therefore I think it is immaterial.

Mr. PENCE: He is presumed to be aware of the contents of his own books.

The COURT: The objection goes to the weight of the evidence rather than its admissibility. Let him answer.

To which ruling of the court the defendants, and each of them, by their counsel, then and there duly excepted.

Mr. BURKE: What is your answer? You say you have?

A. Yes, sir.

Q. With what result? What was their financial condition on the 31st day of December, 1894?

A. They were insolvent. Their liabilities exceeded their assets by $37,342.60.

355 Cross-examination.

By Mr. BROWN:

Q. Who asked you to make an examination of these books?

A. Mr. Burke.

Q. When?

A. Last July.

Q. You made it then?

A. I made part of it then and part in September.

Q. How long did it take you to make this examination?

A. I could not state exactly without reference to my books, but I think it took me in the neighborhood of four to six days including preparation of statement.

Q. You have had no communications concerning the examination of these books with the defendants Messrs. Crawford & Valentine, have you?

A. I don't quite catch your question.

Q. You have had no communication with Crawford and Valentine, or either of them, concerning this examination which you made?

A. No.

Q. Who gave you the books?

A. Mr. Burke.

Q. You didn't communicate with them or with their counsel in any way, did you, in connection with the examination?

A. No.

Q. What did Mr. Burke ask you to do when he asked you to examine their books?

A. He asked me to examine their books with a view of finding out the solvency, or otherwise, of the firm on the close of
356 business on the 31st of December, 1894.

Q. Did you examine the books as to any other date?
A. Not with that object entirely, no.
Q. So the result of your examination is confined entirely to that date?
A. The result I gave you is confined to that date with the exception of following up certain accounts to see what became of them later on.
Q. You reckoned in all the assets, did you, in this examination?
A. All the good assets.
Q. What do you mean by good assets?
A. All collectible accounts.
Q. What do you mean by all collectible accounts? Did you leave out all accounts which were afterwards reported to be uncollectible?
A. I did.
Q. You left out this entire list of accounts which Mr. Niblack mentioned this morning as being sold for $100?
A. I did not hear the testimony this morning.
Q. What do you mean by saying that you left out the uncollectible accounts? What uncollectible accounts did you leave out?
A. I left out all accounts which were not realizable upon when the firm made an assignment.
Q. You mean you left out all the accounts which upon the 21st of May, or which came into the hands of the receiver and which were not collectible; is that so?
A. That is right.

Mr. BROWN: I move to strike out his testimony, your
357 honor. I don't know what evidence there is concerning the work.

The COURT: Let it stand for what it is worth. He has simply stricken out everything that the receiver did not collect, and called it bad.

To which ruling of the court the defendants, and each of them, by their counsel then and there duly excepted.

Mr. BROWN: What knowledge had you that those accounts were bad?
A. I had the book accounts which showed that those accounts had not been realized upon, and I also had before me the receiver's report.
The COURT: Do you know what these accounts were worth at the time you struck the balance? That is, December 31st? Did you make any inquiry whether they were worth anything at that time or not?
A. From the books of account it appeared that they were not worth anything.
Q. That fact appears from the fact they were not collected?
A. No, there were no securities, no collaterals against the accounts I considered bad.

Q. You don't know whether the parties were good or bad on that day?

A. No.

Mr. BROWN: How did you get at the value of the assets which you regarded as good?

A. Because I found that they were realized upon.

Q. What did you put them in at, the price they were realized
358 upon in May or afterwards?

A. I put them in at their book value the 31st of December, 1894.

Q. How did you find their book value on the 31st of December?

A. I found the value of the stock at that date.

Q. How?

A. By reference to the standard publications.

Q. What were they?

A. They were the Economist as far as Chicago stocks were concerned, and I think the New York Financial Times or Financial Chronicle, I am not sure which it was, of New York.

Q. Did you find them all?

A. I found them all with one exception.

Q. What was that?

A. That was a security called the Paige Iron Works.

Mr. BURKE: Car Company?

A. Or Paige Car Company, something like that.

Mr. BROWN: How did you determine the value of that?

A. I put it in at 15 cents on both sides of the ledger and it did not affect the result whatever.

The COURT: It did not affect the result whatever price you put it in at?

A. No.

Q. Would it?

A. No. I might call it 200 or anything; simply to get a figure to go by I put it in at 50 cents.

Mr. BROWN: Do you know among the assets there was a seat certificate in the New York stock exchange?

A. What is the question?

359 Q. Do you know that among the assets there was a seat in the New York stock exchange, a membership?

A. I did.

Q. What did you put that in at?

A. $19,500.

Q. How did you arrive at that figure?

A. By reference to the New York Financial Times or Chronicle.

Q. Did you find a quotation of memberships in the New York stock exchange on the 31st of December, 1894?

A. Not exactly that date, but I found quotations before and after.

Q. Sales afterwards made of memberships?

A. Reported sales.

Q. How long before and how long after?

A. I couldn't tell you without reference, but I think about a year to half a year each way.

Q. I suppose you are aware that a membership in the New York stock exchange now sells for something like $55,000 don't you?

A. No, I am not aware of that fact.

Q. Are you aware that it is not the fact?

Mr. PENCE: That is not material what they may be worth five years after the transaction.

Mr. BROWN: Do you know what they are worth now, what they have sold for lately?

A. No.

Q. Do you know what they sold for in June and July, '94?

A. I believe that in June, 1894, the latest quotation was $19,500.

360 Q. Do you know that? Do you remember that fact, that that was the quotation in June, 1894?

A. Yes, sir.

Cross-examination.

By Mr. VROOMAN:

Q. Did you find any wheat transaction at that time?

A. Yes, sir.

Q. How did you arrive at the value of those transactions?

A. The account which showed those wheat transactions just showed the profit or the loss on each transaction. The balance of the account represented, I believe, the loss on the transactions up to that date.

Q. Did you find anything in the account to show what was being carried at that time in the way of wheat?

A. No.

Q. Will the books show that?

A. No, not on their face.

Q. There might be a large amount of wheat, oats or corn carried at that time, and the books wouldn't show it.

Mr. BURKE: He is testifying what the books show.

The COURT: He is asking if the books show what amount of wheat or stock had been carried at that time. Do they?

A. No, the books don't show.

Q. Does it show at any time what wheat had been carried?

A. Books of account which I saw do not contain any entry.

Mr. VROOMAN: You found wheat transactions of a date
361 prior to that time and subsequent to that time?

A. No.

Q. But you found nothing in the books to show what was carried at the different times?

A. No.

Q. Simply the profits and losses?

A. Yes, sir.

Q. So you are unable to determine what amount of wheat there was on hand at that time?

A. No, sir.

Q. Nor what profits there might be in them or losses on wheat deals that were in their hands at that time from the books?

A. No

Q. Did you examine the accounts of Crawford & Valentine with the firm?

A. Only in so far as to show what balances there were in those accounts on the 31st of December.

Q. You found that both members owed the firm, did you?

A. Yes, sir.

Q. Did you examine into the responsibility of the members of the firm at that time?

A. No.

Q. Or whether they were solvent at that time?

A. No.

Q. Do you know anything about any assets of theirs at that time, or did you make any inquiry as to them?

A. No, I made no inquiry as to their personal responsibility.

Q. Did you examine the bond account?

A. Yes, sir.

Q. In the same manner that you did the stocks?

A. They carried a stock and bond account on their books.

Q. Did you figure out the value of the bonds the same as you did the stocks?

A. I did.

362 Q. On the same basis?

A. The same basis.

Q. From the same source?

A. The same source.

Mr. BURKE: You stated, Mr. Rickett, that you examined the individual account of Crawford & Valentine on the books? That is correct.

A. I did.

Q. And you ascertained what each of them owed to the firm on the 31st day of December, 1894?

A. Yes, sir.

Q. Can you state the total amount that they owed the firm on December 31st, 1894?

A. I could by reference to my report which you have in your hand. R. C. Crawford, on his local account, owed the firm $9,189.36. No, on that account he owed $9,438.48. On another account, which he called his No. 2 account, he owed $707.82. In the account termed Milstead & Crawford, in which he had an interest, Milstead and Crawford owed the firm $118.75. In another form under the name of Stanley & Crawford, Stanley & Crawford owed the firm $323.84. Mr. Valentine owes the firm $4,572.18; and also in another account which he terms his No. 2 account, he owes the firm $2,327.32.

Q. What was the total amount owed to the firm by the defendants Crawford and Valentine?

A. I will have to deduct one or two accounts.

Q. What was the amount of their withdrawals?

The COURT: Somewhere about $40,000, wasn't it?

A. No, it is in the neighborhood of $30,612.

363 Q. One item of nine?

A. No, two of nine.

Q. What is the third?

A. $4500, and two of over $2,000, including one or two losses on speculations which they made, and their withdrawals, the total amount is $30,612.02.

Mr. BURKE: At what date?

A. At the close of business, the 31st of December, 1894.

The COURT: That is about two weeks before the sale of the first traction stock?

Mr. BURKE: No, sir. The first sale of traction stock is on October 24th, 1894. The next sale is on January 10th.

The COURT: You were carrying 500 shares of that stock down to December 31st.

Mr. BURKE: Not for me.

The COURT: Well, for somebody, 500 shares.

Mr. BURKE: They had 500 shares on the 31st of December, 1894, but 100 shares purchased by themselves. They sold 100 shares on October 24th. On October 24th, 1894, they had 500 shares on hand belonging to me.

Mr. BROWN: On the order of Mr. Burke bought on the 29th.

Mr. BURKE: And on the 24th they sold 100.

The COURT: The evidence shows that none of these certificates were tagged with your name or anybody else's name, but the evidence introduced by yourself is here that they had on January 1st, 450, July 1st, 450, November 30th 50, and December 31st 500.

364 Mr. BURKE: Yes, they had 500 on the 31st of December, but I am tracing the stock which belonged to me. On the 24th of October they had 500 shares belonging to me, but on that day they sold out of that 500 shares, they sold 100. Consequently, at the close of business on October 24th of the Metropolitan Traction stock they had 400 and then on the 29th they bought 100, not on my order, their own.

Mr. BROWN: They sold for Wilkins on October 24th and bought on October 29th.

The COURT: You can argue it when they get through.

Mr. BURKE: That sale or purchase I had nothing to do with whatever.

Q. Have you got a list of the debts that existed on the first day of January, 1894?

A. I have.

Q. Will you state them? I mean the 31st of December, 1894?

A. Do you want them in detail?

Q. Yes, sir.

A. J. J. Kilgore $836.73; J. Hodson, Jr. on No. 1 account $37,648.15; Joseph R. Wilkins, $3,736.42; Frank C. Lynch, $9,637.73; Hodson & Salsbury $1,335.09; J. Hodson Jr., on No. 2 account, $691.84; Wilkins, Hodson & Co. pool account $674.93; J. Hodson Jr., on No. 3 account——

Q. That is I. Hodson?

A. $5,308.11; I. Hodson, Jr., on special account $2,159.52; P. E. Stanley $6,635.18; C. A. Eastman $588.66; E. S. Mears,
365 $608.82; W. T. Leeland, $1200; Emma Green, trading through S. V. Barker—excuse me, S. V. Barker trading through Emma Green, $532.04; James J. Townsend $169.61.

Q. These are the accounts which you estimated as bad and uncollectable accounts in making up your statement?

A. Yes, sir.

The COURT: Why was the Townsend account called bad, do you know?

A. The books do not show it was ever collected.

Q. Is he not a man prominent on the board?

A. I presume it is a disputed account.

Mr. VROOMAN: Wait, do you know anything about it?

A. I know it was never collected.

Q. That is all you know about these, that they were not collected?

The COURT: He has substantially stated that, that he did not make any investigation but simply found that they were not collected.

Mr. BURKE: Then he also stated it was what he knows from the report of the receiver.

The COURT: He says that the receiver reported that he had not collected it.

Mr. VROOMAN: This list you have just made out is the list you made from the receiver's report?

A. No, sir, it is made from the books.

366 Q. And compared with the receiver's report?

A. Yes, sir.

Q. The receiver's report contains these same names?

A. No, not all, not quite all.

Q. You have added somthing?

A. For instance, the receiver's report does not show C. A. Eastman, because the firm of Crawford & Valentine, themselves, wrote that off as a bad account very shortly after January first.

Q. How much is that account?

A. $588.66.

Q. It is substantially the same list?

A. It is substantially the same list, yes, sir.

Q. Items outside of that list are no large amount, small trifling amounts?

A. Yes, sir.

Mr. BROWN: I presume in the examination of the witness I may see and use that list?

Mr. BURKE: When you say you didn't take into account the bad or uncollectable debts, state just what you meant by not taking them into account? You did take them into account, didn't you?

A. I took them into account in this manner, that I charged them against the profits, but I did not include them as assets on the 31st of December.

Q. But you did take them into account in making up this statement?

A. I did, yes, sir.

Mr. BROWN: You simply mean by saying that you didn't take them into account, you mean this, don't you, that if those
367 bad debts, as you call them—that list which you read—had been included in the assets, the assets would have been just so much greater than what you reported?

A. Yes.

Q. And the aggregate of them is how much?

The COURT: The aggregate of the bad accounts?

A. The aggregate of those accounts designated by me as bad is $67,753.51.

Mr. BROWN: Eliminating those altogether from the assets you say the books show the liabilities exceeded the assets in the amount of $37,000, was it?

A. $37,342.60.

Q. Counting them at their face, the assets would have exceeded the liabilities at some $30,000?

A. Yes.

Q. And did you not take into account anything that was not show- on the books? of Crawford & Valentine in regard to any possible responsibility, or assets of Valentine & Crawford not shown as assets of the firm of Crawford & Valentine, did you?

A. Well, to this extent that the transactions after the date that I made this investigation do not show that they made any large amount of money in any speculations.

Q. No, I do not mean that, but the books show the fact that Mr. Valentine owed the firm, according to the bookkeeping entries a certain sum?

A. Yes, sir.

368 Q. Had they been possessed of individual assels those accounts would have been considered good, would they not?

Objected to by counsel for plaintiff.

Q. You didn't take into account any personal responsibility of Valentine and Crawford?

Mr. PENCE: He could not. It was not his business.

The COURT: Were the liabilities of the individual members of the firm to the firm included in those assets?

Mr. BURKE: Not in the bad and uncollectable accounts.

The COURT: Are they included in the bad accounts you eliminated?

A. They are not included in the bad accounts, but they are not included anywhere.

Mr. BROWN: They are neither put in the good or bad assets in your figures?

A. No.

The COURT: When these accounts, that you call bad, and therefore disregarded or discarded, when they became bad, you don't know? Do you know, in other words, when the financial responsibility of these men became worthless?

Mr. BURKE: I suppose he knows on the first of January they were there.

The COURT: I am asking when they became bad.

Mr. BURKE: They never were collected.

The COURT: There was a time when they were considered good, or they wouldn't have been given credit. Do you know when they became bad?

A. No, not definitely.

369 Q. You do not know, except from the fact that they were not afterwards collected?

A. I think any business man would have looked upon them as very doubtful at the date I made this examination.

Q. Or why should you consider them on December 31st good?

A. Because I think if they were good they would have put up collaterals to protect the accounts.

Q. Simply because there was no collateral you regarded them as bad?

Mr. MORAN: No collateral and they were never paid.

A. Afterwards they were not paid.

Mr. VROOMAN: You mean the books show that they were not paid?

A. The books show.

Q. Just answer the question. The books show that they were not paid?

A. Yes, sir, the books show that they were not paid.

Mr. BURKE: And the receiver's report shows they were not paid?

A. Yes, sir.

Q. And they were sold for $100?

A. Yes, sir.

Mr. VROOMAN: You don't know how much of that has been collected since that time?

A. Not since they were sold by the receiver, no.

Q. You don't know but they have been all collected, and if they had been collected the credits would not appear on the books necessarily here after they had been sold, would they?

370 A. Not after they had been sold, no.

Q. These stocks fluctuate, don't they from day to day in value: some days they are less and on other days considerable more?

A. Yes, sir.

Q. And in a large amount of stocks and bonds that fluctuate in

that way a small difference in the prices would make considerable difference in the amount of the assets, wouldn't it?

Objected to by counsel for plaintiff; objection sustained; to which ruling of the court, defendants, by their counsel then and there duly excepted.

Mr. BROWN: Do you know anything about the reasonable expectations of either Messrs. Crawford or Valentine during the time that the- were continuing in business of securing help from immediate family connections and friends?

A. Only by hearsay.

Q. The responsibility of their parents, or anything of that sort?

A. Only by hearsay.

Mr. PENCE: I offer in evidence the deposition of William Kent.

Said deposition is as follows:

371 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Defendants. } 173,384, 7704.

The deposition of William Kent, of the county of Cook and State of Illinois, a witness of lawful age produced, sworn, and examined under oath, on the 18th day of May, A. D. 1900, at the office of Flower, Vroman & Musgrave, room 403, 164 Dearborn street, in the city of Chicago, in the county of Cook and State of Illinois, before me, Stella W. Tenney, a notary public in and for said Cook county, Illinois, pursuant to the annexed stipulation, to be used as evidence on the trial of the above entitled cause on behalf of said plaintiff, said deposition being taken on oral interrogatories then and there propounded to said witness.

Present: E. O. Brown, Esq., and C. E. Vroman, Esq., appearing on behalf of said defendants; the plaintiff appearing in his own behalf.

The said WILLIAM KENT being first duly sworn by me as a witness to the said cause, previous to the commencement of his examination, to testify the truth as well on the plaintiff's behalf, as on behalf of said defendants, so far as he should be interrogated testified and deposed as follows:

Direct examination by Mr. BURKE:

Q. 1. What is your full name?

A. William Kent.

372 Q. 2. Where do you reside?

A. 5112 Kimbark avenue, Chicago.

Q. 3. How long have you resided in this city?

A. I was born in Chicago, but was not a resident of the city from 1871 to 1887, and have resided here since then.

Q. 4. Are you personally acquainted with Richard C. Crawford and Edward A. Valentine, defendants in this suit?

A. I am.

Q. 5. How long have you known them?

A. I have known Valentine since about 1888. I have known Crawford slightly since about 1894,—1893 or 1894.

Q. 6. Are you acquainted with John E. Burke, plaintiff in this suit, and how long have you known him?

A. I have been acquainted with John E. Burke since 1887.

Q. 7. In the latter part of 1894, and the early part of 1895, in what business were defendants engaged, under what name, and where was the business carried on?

A. The firm was Crawford & Valentine. They were engaged as stock brokers, I believe, with the style of bankers and brokers. Their office was in the Stock Exchange building in the south half of the La Salle Street side; I can't remember the number exactly.

Q. 8. Where, in this city?

A. In Chicago, yes.

Q. 9. On what floor?

A. Ground floor.

Q. 10. State whether on April 1, 1895, you paid to the defendants, Crawford & Valentine, any money for John E. Burke, the plaintiff, and at his request?

A. Yes, I did.

Q. 11. How much money did you then pay the defendants, and at what place was the money paid?

A. I carried a check to the office of Crawford & Valentine and the check amounted to $3300.

Q. 12. The question is, Mr. Kent, how much money did you pay the defendants, and at what place was the money paid.

A. I didn't hand any currency to the people; I gave them my check.

373 Q. 13. You gave them your check?

A. For $3300, at their office.

Q. 14. The $3300 was paid in check and not by currency?

A. It was.

Q. 15. For what purpose was the $3300 paid?

A. $3300 was paid as margin on the account of John E. Burke for Metropolitan Traction stock.

Q. 16. On how many shares of Metropolitan Traction stock?

A. 550 shares.

Q. 17. On April 1, 1895, and before you gave the defendants your check for $3300 as margins on 550 shares of Metropolitan Traction stock, did you have any conversation with Valentine, one of the defendants, with reference to the number of shares of Metropolitan

Traction stock which Crawford & Valentine then had on hand, or were then holding and carrying for John E. Burke, the plaintiff?

Mr. BROWN: Objected to as leading and otherwise objectionable in form; assuming what has not been proven.

Q. 18. I will modify the question. On April 1, 1895, and before you gave the defendants your check for $3300 as margin on 550 shares of Metropolitan Traction stock, did you have any conversation with Valentine, one of the defendants, with reference to said share of stock?

A. I did.

Q. 19. State where that conversation was had, and what was said, or the substance of what was said, on the subject to which I have referred.

A. The conversation was held on the floor of the stock exchange where I had gone to see Valentine, whom I knew better than Crawford, and the conversation was that I was willing to put up a certain amount of margin to keep John E. Burke's Metropolitan Traction stock from being sold. It was at that time my understanding that John E. Burke held 500 shares——

Mr. BROWN: Counsel for defendant Crawford desires to object to the witness stating his understanding, and insists that the answer to this question should give only the conversation between
374 him and Mr. Valentine as nearly as he can recollect it, or the substance of it, but not the understanding of the witness.

Q. 20. Finish your answer, Mr. Kent.

A. Mr. Valentine informed me that John E. Burke at that time held 550 shares of the stock of the Metropolitan Traction Company, with his firm. I have a distinct recollection of the amount because it was 50 shares more than I had been informed was held by Mr. Burke at the last time I had had conversation with him on the subject.

Q. 21. In the conversation to which you have just referred, what if anything was said between yourself and Mr. Valentine, with reference to the amount of margins that was required on the 550 shares of Metropolitan Traction stock?

Mr. BROWN: Objected to as leading.

Q. 22. I will modify the question by asking you if in the conversation to which you have just referred as having had with Valentine, was anything said in regard to the amount of money that would have to be put up as margins on the 550 shares of Metropolitan Traction stock?

Mr. BROWN: Objected to as leading.

A. The conversation was to the effect that Crawford & Valentine would insist on 10 points margin on that 550 shares of stock.

Q. 23. On April 1st, 1895, and after your conversation with Val-

entine on the floor of the stock exchange, and before you gave the defendants your check for $3300, did you have any conversation with the defendant Crawford, and with one J. T. Kilgour, with reference to the number of shares of the Metropolitan Traction stock which Crawford & Valentine then had?

A. I had a conversation with Crawford and the man who managed his office, but as to the name of that man I could not swear.

375 Q. 24. State where that conversation was had, and what was said and done, or the substance of what was said, with reference to margin on Metropolitan Traction stock referred to in your previous answers.

A. The same question of the amount of stock came up, and the same question of margin came up—10 point margin; and we then and there figured together on the amount that I should have to put up in order to make the margin good, and that amount was found to be $3300, for which I then and there wrote out my check and handed it in to the firm.

Q. 25. Prior to your giving your check for $3300, state fully the substance of the conversation that was had that morning in the office of Crawford & Valentine between yourself and Mr. *Mr.* Crawford and J. T. Kilgore, with reference to the number of shares of Metropolitan Traction stock that was required to be margined, and the amount of the margin. Please relate the conversation as fully as you can, or give the substance of it?

A. In substance the conversation was based upon the question of how much margin would be necessary to protect the stock, and I was informed by Mr. Crawford that it would have to be kept at 10 points above the market——

Q. 26. That it would have to be kept at 10 points above the market, or that a 10 point margin should then be required on it?

Mr. BROWN: Counsel for defendant objects to the question as leading, and as interrupting the witness and putting words in his mouth.

A. What I meant was that there should be 10 points margin kept to it. That was what I was trying to get at.

Q. 27. Finish your answer, please.

A. I at that time asked Mr. Crawford if they were not calling Mr. Burke pretty hard for margins, and he informed me that it was necessary as they were having sharp calls for their margins from the people who were carrying the stock for them. Thereupon I wrote a request that whenever 10 points of margin should be secured without the use of my money, that I should be en-

376 titled to call for the difference between the 10 points margin and the market, so as to be able to take my money down.

Q. 28. In the conversation to which you have just referred, state whether or not anything was said with reference to any amount of money that John E. Burke might have to put up as margins in addition to your $3300, and if so, state what that was?

Mr. BROWN: Objected to as leading, and the whole line of examination is objected to as persistently leading; and I give notice that we shall insist upon it at the hearing.

A. It is my recollection that John E. Burke was called upon at the same time to put up the money, but I have no specific recollection of the amount of money that was put up at that time by John E. Burke.

Q. 29. How was the amount of margins to be put up then arrived at, and what was done if anything for the purpose of ascertaining how much margins should be put up?

A. My recollection is that a calculation was made as to how much of an amount was needed to margin 550 shares of the stock 10 points, and the difference between the margins put up by John E. Burke; and what was necessary to make that margin, my recollection is, $3300, which I put up.

Q. 30. Was any figuring done?

A. Yes.

Q. 31. Who did the figuring?

A. I know I figured, and it is my recollection that the other people figured.

Q. 32. State whether, within a few weeks prior to April 1, 1895, you made an effort on behalf of the plaintiff to find some bank or some party in Chicago that would be willing to advance to the defendants the money due them on the Metropolitan Traction stock in controversy in this cause?

Mr. BROWN: Objected to as immaterial, incompetent and leading.

A. I did. I went, amongst others, to the firm of Walker &
377 Wrenn and asked them whether they could not manage to get a loan on this stock so that the stock would be carried for a long period,—an out and out loan.

Mr. BROWN: Answer objected to as immaterial and incompetent, and motion made to strike it out.

Q. 33. State whether on May 20, 1895, you went with the plaintiff to the office of the defendant at 220 La Salle street, and then and there on behalf of the plaintiff demanded of Mr. Boyd, who represented the Chicago Title & Trust Company, receiver, the delivery of 550 shares of Metropolitan Traction stock, and then and there offered to pay him the amount due from the plaintiff to the defendants on said stock.

Mr. BROWN: Objected to as incompetent, immaterial and leading, and the objection to the form of the question will be insisted on at the hearing.

A. I can swear to everything except the exact date. Leaving out the question of the exact date I should state that I went immediately subsequent to the failure of Crawford and Valentine to their

office, with John E. Burke, and made a demand for that stock, being prepared at that time to take it up and pay for it.

Mr. BROWN: Answer objected to and motion made to strike it out.

Q. 34. On whose behalf did you go to the defendants' office and make this demand and offer?

A. On behalf of John E. Burke.

Q. 35. Was this demand and offer made on the day of the defendants' failure?

A. It is my recollection that it was the day following the failure, but I couldn't swear to the date. It was immediately subsequent to the failure.

Cross-examination by Mr. BROWN:

Q. 1. Mr. Kent, this $3300., of which you have spoken, was repaid to you afterwards, with interest, was it not?

A. It was.

Q. 2. By Crawford & Valentine?

A. By Crawford & Valentine.

378 Q. 3. When?

A. I consulted my books this morning and found the entry on May 13th.

Q. 4. Then if you testified that it was April 23rd in the previous trial of this cause, that was a mistake?

A. Yes.

Q. 5. Now, this conversation that you had upon the floor of the stock exchange with Mr. Valentine,—I would like, if you can, that you should give it a little more in direct language. Do you remember whether you spoke to Mr. Valentine, or he to you, about this business, upon that occasion?

A. I went there to find him, and it is natural I spoke to him first.

Q. 6. What, as nearly as you can remember, did you say to him, exactly?

A. I said in substance that I wished to protect the Metropolitan Traction stock which Mr. Burke was carrying with his firm.

Q. 7. Then what did he say? Did he mention the number of shares to you, or did you speak of them to him first?

A. It is my recollection that I mentioned the number of shares first, as a means of getting at what he would require as margins; and it is my recollection that I mentioned the number of 500 shares and that he then and there informed me that the number of shares was 550.

Q. 8. That was more than you had supposed Mr. Burke was carrying?

A. Yes.

Q. 9. And now what did you say when you found that out? Did

you say something about that being more than you had supposed or expected?

A. I did.

Q. 10. What did you say?

A. I can't remember the exact language used but I have a distinct recollection that I evinced some surprise and displeasure at the amount being more than I supposed.

Mr. BURKE: I object to the answer of the witness and move that it be stricken out as incompetent, irrelevant, immaterial and not cross-examination.

379 Q. 11. I should like the whole conversation, Mr. Kent, as nearly as you can give it. Give everything,—all that you can remember.

Mr. BURKE: I object to the question for the reason that it is not confined to the matter drawn out in direct examination.

A. I can only give the substance of the conversation; it was had a good many years ago.

Q. 12. Well, give the substance of the entire conversation held at that time, not any particular part of it, but all that you can remember of that conversation.

Mr. BURKE: Question objected to because it is not confined to the matter in controversy, and because, further, it is not confined to the matter brought out in direct examination. The witness might have, in the conversation,—there might have been a great many other matters talked about, referred to and discussed, that have no bearing whatever upon the questions in controversy in this case.

A. I have no distinct recollection of that conversation, excepting such portion as concerned me in putting up a margin on the stock. I found at that time, as I said, that there was more of that stock than I had supposed. I remember distinctly that I was displeased at finding there was more stock to be protected that I had gone with the idea of protecting. Further than that I do not recollect the conversation.

Q. 13. Did you express that displeasure?

A. It is my recollection that I did.

Q. 14. Did you say that Mr. Burke had been speculating heavier than he had any right to?

Mr. BURKE: Objected to as incompetent, irrelevant, immaterial, and not cross-examination.

A. I cannot recollect specifically remarks of that sort, but I do recollect, as I said, the displeasure at finding that there was
380 more stock to be margined than I had expected to margin.

Q. 15. Did you say that this was the last time that you were going to help Mr. Burke out?

Mr. BURKE: Objected to as incompetent, irrelevant and immaterial, and not cross-examination.

A. I have no distinct recollection of such remark.

Q. 16. Have you not already testified upon a former occasion that you did say that?

A. That was some years back. Does a person's memory remain the same?

Q. 17. *Q. 17.* Wasn't it better the nearer it was to the time of the transaction? Wasn't your recollection of what took place in April, 1895, better in March, 1897, than it is at present?

A. It might be.

Q. 18. Then if in March, 1897, you remembered that you did say to Mr. Valentine that that would be the last time that you would help Burke out, it was probably correct, was it not?

Mr. BURKE: Objected to as incompetent, irrelevant, immaterial and not cross-examination.

A. I should not have perjured myself on the former occasion.

Q. 19. How did you come to go to see Crawford & Valentine? At whose solicitation did you go?

A. I cannot say with clear recollection that I was solicited to see Crawford & Valentine. I was solicited to help Mr. Burke and I went to see Crawford & Valentine in the line of that solicitation.

Q. 20. Solicited by Mr. Burke?

A. Yes.

Q. 21. When you went up stairs, or down stairs, wherever it was to the office of Crawford & Valentine, and saw Mr. Crawford and the general manager of the defendants, as you say, will you please state again what the exact conversation was there as nearly as you can recollect—the whole of it?

A. The substance of it was as to how much margin it was necessary for me to put up to make the 10 points good.

381 Q. 22. Was there a conversation at that time about your getting back whatever you might put up if the stock went up 10 points?

A. Yes.

Q. 23. What was that?

A. There was not only a conversation to that effect, but I believe I made a writing to that effect. I don't recollect whether they accepted it or not, or exactly what form it took, but there was certainly a memorandum to that effect. This is correct. (Referring to the paper handed to witness by counsel for defendants) I wrote out this memorandum and it was signed by John E. Burke,—authorizing them to pay me back when the margin was secured for 10 points.

Q. 24. You mean that the paper which you have in your hand, to the best of your recollection, is a correct copy of the manuscript in your hand-writing, signed by John E. Burke, to which you have just referred?

A. Yes.

Q. 25. When did John E. Burke sign that?

A. Signed it in the office at that time when he was with me.

Q. 26. How did that come to be made? Did Mr. Valentine or

Mr. Crawford tell you you would have to have an order from Mr. Burke if the money was to be paid back to you?

A. I can't answer directly as to that, but the money advanced by me, as far as Crawford & Valentine were concerned, went directly into Burke's account, and before it could get out of Burke's account back to me there should be some notice to the effect that it should go back.

Q. 27. And wasn't the propriety of that, or the necessity of that, mentioned to you in one of these conversations, either by Mr. Valentine or Mr. Crawford?

A. I can't say as to that at all, whether it occurred to me, or occurred to them.

Q. 28. You may read the paper which you have been alluding to.

A. (Reading.)

Messrs. Crawford & Valentine:

382 Please return to William Kent, at his order, any balance that may be due on Metropolitan Traction stock held for me up to $3300, after a 10 point margin is provided for, the stock at this time being secured to 76¼.

(Signed) JOHN E. BURKE.

That it dated April 1, 1895.

Q. 29. Did you call for this $3300 and interest?

A. Yes.

Q. 30. Did you call on them at their office?

A. It is my recollection that I went to their office and got that money.

Q. 31. At this time, in this conversation, do you remember that there was anything said about any other stock that Mr. Burke was carrying with Crawford & Valentine?

A. Yes, I have a recollection that there was some Chesapeake & Ohio stock. That is the only thing that I happen to recollect; and the question came up as to margining that and I refused to margin it, whereupon Mr. Burke told them to sell it.

Cross-examination.

By Mr. VROMAN:

Q. 1. Mr. Kent, you have been asked a question by Mr. Brown with reference to what you stated when you found that Mr. Burke had been carrying more stock than you supposed. As I understand, you testified upon a former trial in this action?

A. Yes.

Q. 2. And did you make in that testimony the following answer: "I probably said I thought Mr. Burke was doing a little more business than he ought to be doing under the circumstances?"

Mr. BURKE: Objected to as incompetent, irrelevant, immaterial and not cross-examination.

A. I have an idea that I did make such a remark. I have a faint recollection that I may have said something of that sort.

Mr. BURKE: I move to have the answer stri-ken out as incompetent, irrelevant and immaterial, and not cross-examination.

Q. 3. And were you asked at that time this question, and did you give the following answer: "Q. Didn't you say in words or substance, that Burke, the old fool, is speculating heavier than he
383 has any right to? A. I presume I may have said so."

Mr. BURKE: Objected to as irrelevant, incompetent and immaterial and not cross-examination.

A. I have a recollection of having testified to that effect.

Q. 4. And again, "That this would be the last time you would help him out? A. I think that is correct."

Mr. BURKE: Same objection.

A. As to that I have no recollection. If I testified so undoubtedly I was telling the truth.

Q. 5. If you did testify to that effect at that time you said what you thought to be the truth?

A. Yes sir.

Q. 6. Did you have a notice from Crawford & Valentine to come and get the money that you afterwards got in May?

A. I have no recollection of that. I don't think I did; I can't say whether I did or did not have notice. It is my impression that I didn't have notice.

Q. 7. How did you discover that you were entitled to it?

A. By watching the market.

Q. 8. You understood that Mr. Burke had to put up margins on certain stock, didn't you?

Mr. BURKE: Objected to as asking for the understaiding of the witness.

Q. 9. From whom did you acquire that information or knowledge?

Mr. BURKE: Same objection.

A. Mr. Burke said that his stock was liable to be sold out if he didn't keep this margin good.

Q. 10. How did you understand it was liable to be sold out? Who was to sell it?

Mr. BURKE: Objected to on the ground that it is asking for the understanding of the witness, and also an opinion of the witness, and not asking for a statement of any fact, and as incompetent, irrelevant and immaterial, and not cross-examination.

A. In answer to your question I can only say that banks or
384 brokers that make collateral loans and carry stocks for people, are accustomed to insist on certain margins, and those margins failing they have the right to sell the stock out; and I understood this to be the situation in this case, that these people were carrying the stock for Mr. Burke and they demanded that a margin of 10 points should be kept up, and that the penalty for his not keeping that up would be that they would sell the stock to clean up his indebtedness to them.

Mr. BURKE: Answer objected to, and I move that it be stricken out as incompetent, irrelevant and immaterial, and giving the conclusion and opinion of the witness, and as being hearsay testimony, and as not a statement of fact.

Q. 11. Mr. Kent, do you know that at that time it was necessary to put up the margins to protect that stock, or his right to the stock—Burke's right to the stock?

Mr. BURKE: Objected to as incompetent, irrelevant and immaterial, and not cross-examination.

A. There was no question that during that time when I was endeavoring to help Mr. Burke to keep his stock, that I was conversant with the market prices of the stock from day to day. I saw the quotations and heard Mr. Burke's statement, and when I went into the office Crawford & Valentine's quotations were there and I consulted them.

Q. 12. And it was necessary to protect that stock that these margins should be put up?

Mr. BURKE: Objected to.

A. I could not state that it was necessary. It was what they demanded. The necessity of the case was another matter entirely; they did demand it.

Q. 13. Mr. Burke was not able to raise the amount at that time?

Mr. BURKE: Objected to as incompetent, irrelevant and
385 immaterial, and not cross-examination.

A. I could not state. I know that I put the money up.

Q. 14. You did it at his request?

A. Yes.

Q. 15. With the understanding from him that he was not able to do it? Is that the case?

Mr. BURKE: Objected to as incompetent, irrelevant, immaterial and not cross-examination.

A. It is.

Q. 16. Well, you understood, Mr. Kent, that when you put up this $3300 that unless it was done, any right which Mr. Burke had to any claim or interest in the stock would be wiped out?

Mr. BURKE: Objected to as incompetent, irrelevant, and immaterial, and not cross-examination; as asking for the understanding of the witness and not asking for any statement of fact.

A. It was my understanding that the firm of Crawford & Valentine demanded that this margin be kept good, and that if it were not kept good——

Q. 17. I want an answer to my question.

A. I am trying to answer your question. I am telling you what my understanding was. My understanding was that they would sell Burke's stock if his margin was not kept good.

Q. 18. (Question 16 repeated)

Mr. BURKE: Same objection.

A. I can testify that if that margin were not put up that they threatened to sell the stock.

Q. 19. You understood that if it was not put up, his interest would be wiped out?

Mr. BURKE: Same objection.

A. They would sell the stock, and if they sold the stock his interest might not be wiped out,—he might have had other margins there besides.

386 Mr. BURKE: Answer of witness objected to, and motion made to strike it out on the ground that it is not a statement of facts, but the understanding or conclusion or opinion of the witness.

Re-direct examination by Mr. BURKE:

Q. 1. Mr. Kent, have you any distinct recollection as to whether the $3323.65 was paid to you personally, or whether it was paid to Otto Langbein, an employé of yours?

A. I have no definite recollection. My memory is that I went to the office and got the check myself. I feel quite sure of that, but it is only an impression.

Q. 2. Have you any recollection of calling upon Crawford & Valentine the defendants in this case, on or about the 13th of May, with reference to their paying you this $3300, and being refused unless you obtained an order from John E. Burke, the plaintiff?

A. I have no distinct recollections to that. I can't testify as to that.

Q. 3. Have you any recollection of getting another order from John E. Burke, the plaintiff, upon the defendants for the payment of this money to you?

A. No.

Q. 4. Do you remember whether you had an order from the plaintiff in this case upon the defendants to pay you $3323.65?

A. The order that I remember called for $3300.

Q. 5. But you did receive $3323.65?

A. I did.

Q. 6. Do you recollect whether you had an order for that amount?

Mr. BROWN: Counsel objects on the ground simply that the witness has several times answered the question, and that it is manifestly improper to continue to repeat it.

A. I have no recollection about any order excepting the order calling for $3300.

Q. 7. That was the one that was left in their office on the
387 first of April 1895?

A. Yes; I distinctly remember that because I wrote it myself.

——— ———.

Subscribed and sworn to before me this 18th day of May, A. D. 1900.

——— ———,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Stella W. Tenny, a notary public of the county of Cook, in the State of Illinois, and duly appointed by the annexed stipulation to take the deposition of the said William Kent, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said William Kent as a witness in the suit between John E. Burke, plaintiff, and Richard C. Crawford and Edward A. Valentine, defendants he was duly sworn by me as such notary public to testify the truth in relation to the matters in controversy between the said John E. Burke, plaintiff, and the said Richard C. Crawford and Edward A. Valentine, defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at the office of Flower, Vroman & Musgrave, room 403, 164 Dearborn street, in the city of Chicago, in the county of Cook, and State of Illinois, on the 18th day of May, A. D. 1900, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over by the said witness, and that thereupon the same was signed and sworn to by the
388 said deponent, William Kent, before me the oath being administered by me as such notary public, at the place and on the day and year last aforesaid.

Witness my hand and notarial seal at Chicago, Cook county, Illinois, this 18th day of May, A. D. 1900.

STELLA W. TENNEY,
Notary Public.

My fee for taking the foregoing deposition is seventeen dollars ($17.00) Paid by Edward A. Valentine

STELLA W. TENNEY,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of said County.

JOHN E. BURKE, Plaintiff,
vs.
RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Defendants.
} Gen. No. 173,384, Term No. 7704.

Stipulation.

Whereas William Kent is about to leave the State of Illinois to be absent until next fall therefore it is hereby stipulated and agreed that the deposition of the said William Kent may be taken on behalf of the plaintiff in the above entitled cause by and before Stella W. Tenney, a notary public, on Monday, the 18th day of May, 1900 at 11 o'clock a. m. and on return may be read in evidence on the trial of said cause subject to such valid objections as may be made by either party to *be* interrogatories, cross-interrogatories and answers.

Dated Chicago May 16, 1900.

JOHN E. BURKE, *Plaintiff.*
PECKHAM, BROWN & PACKARD,
Att'ys for Def't Crawford.
FLOWER, VROMAN & MUSGRAVE,
Att'ys for Def't Valentine.

389 Mr. MORAN: We want to introduce the accounts of J. E. Burke.

The COURT: I think they have all practically been read into the record.

Mr. MORAN: No, they have not been read in, your honor. There have only been the results of certain things read in.

The COURT: Now, you want the whole ledger account.

Mr. BROWN: I offered Mr. Burke's account in connection with his cross examination, pages 526, and 585. It is in the record. I don't make any objection to their offering it.

The COURT: Is it admitted by you now that those pages 526 and 585 are now in the record?

Mr. BROWN: Yes.

The COURT: It is admitted, Judge Moran, that it is in the record.

Mr. BROWN: On cross examination we offered it, and they objected, and your honor said it was competent.

Mr. MORAN: The account on page 526 of the ledger, commencing September 29, 1894 from that on to the close of the account, running into page 585.

Mr. BROWN: I offer the whole of it. They begin some way down.

The COURT: If it is not already in the record it is now admitted. It is stipulated by counsel for the defendants that it is in the record.

390 Mr. BROWN: Yes, but I don't want to begin September 29th.

Mr. MORAN: We offer the account of R. C. Crawford shown on pages 201, to 212 inclusive.

The COURT: For what purpose is that offered?

Mr. MORAN: To show the character of his dealings.

The COURT: To show the character of the dealings of one of the firm.

Mr. MORAN: Yes. Now, No. 2 account, page 231 of the ledger, to 233, inclusive. We offer No. 3 account, page 234; also Crawford's New York account, on page 230 and then carried to 224 to 228 inclusive; Crawford's special account on page 229 of the ledger. It is all on that page. Now, E. A. Valentine's account, page 240 to 245 inclusive; Valentine's No. 2 account, page 250 to 252 inclusive; stocks and bonds account 410–411, 392 to 395 inclusive; Stanley & Crawford account 571 and 570; Stanley & Vallentine page 571; P. E. Stanley, 541 550 and 578; J. T. Kilgore 507, 256 and 257; Crawford & Valentine grain account 289; J. R. Wilkins 530, 476 to 479 inclusive, 489; Wilkins, Hodson & Co. pool account, 541, I. Hodson, Jr., 530; 446 to 452 inclusive; No. 2 account, I. Hodson, Jr., 539; No. 3 account I. Hodson, Jr., 544; special account, I. Hodson, 575; Hodson & Salsbury 538; Baldwin & Farnham 519 and 270 to 276 inclusive. Dick Bros. & Co., No. 2 account 411–12; Toland Bros. & Co. 416, bills

391 payable 183, from and including July 12th; profit and loss account 390, capital assets and liabilities page 9 of the cash book; assets and liabilities of Valentine & McAvoy, cash book 9; Wershiefer 614–16, 617, 618, 619.

Mr. BROWN: What has that to do with this case?

Mr. MORAN: To show the insolvency and character of their dealings.

The COURT: There is no evidence showing there was any speculative accounts carried on by Wershiefer.

Mr. MORAN: They are the correspondents of the defendants in New York.

The COURT: I think that is too remote. There is no reference to it.

Mr. MORAN: It is offered to show the character of their dealings on the question of insolvency and how they stood from time to time.

The COURT: It will make this record most voluminous if it goes up, and so far there is not a shred of evidence as to that account.

Mr. MORAN: We are not so much interested in the size of the record if it goes up.

The COURT: I will sustain the objection. There is no evidence so far in connection with that account.

Said accounts offered in evidence (excepting the Wershiefer account) are as follows:

392 Mr. MORAN: We offer the account of E. & C. Randolph, page 600, 1, 2, 3, 4, 5, 6, 7, 8 and 9 on the question of the insolvency.

Objected to by counsel for defendant; objection sustained.

Mr. MORAN: We offer the account of Dick Brothers & Lawrence, the New York firm.

The COURT: That is competent, I believe.

Mr. BROWN: I have no objection to any of it except its voluminousness. If it is desirable to have it in, I have no objection.

Mr. BURKE: Page 342 to 354 inclusive. That includes the account of Dick Brothers & Rowe on page 354. It is all in one account.

All said accounts offerred in evidence will be found in following pages of the bill of exceptions.

393 JOHN E. BURKE, the plaintiff herein, having been recalled on his own behalf was further examined by Mr. Moran, and testified as follows:

Q. Have you ascertained from the books of the defendants whether they had any Chesapeake & Ohio stock in the month of January, 1895?

A. Yes, sir, I have ascertained that they did not.

Q. State what the fact is.

Objected to by counsel for defendant-; which objection is overruled by the court; to which ruling of the court, the defendants, and each of them, by their counsel, then and there duly excepted.

A. They didn't have any. They had none, no, sir.

Q. Do you know whether or not they had any stock on the first of April, Chesapeake & Ohio stock?

A. I testified before when I was on the stand that they didn't have any Chesapeake & Ohio.

The COURT: Does the record show, Judge Moran, what was the value of this stock on the day of the commencement of this suit?

Mr. MORAN: No, sir.

Mr. VROOMAN: They don't claim that.

The COURT: What date, according to your theory, is the measure of damages fixed at?

394 Mr. PENCE: The date of the conversion.

The COURT: When did you demand the delivery of this stock to you?

Mr. MORAN: That was May.

Mr. PENCE: May 21st.

The COURT: Is there anything in the record to show what he demanded in his talk?

Mr. PENCE: No, but I don't think that is the measure according to the decisions in this State at all.

Mr. BROWN: There is a stipulation here that Mr. Burke got me to sign covering the quotations of this stock for a very long time. We made a stipulation that the Financial Chronicle could be used, that everything in it could be considered in evidence. But we are

perfectly willing to stipulate. I don't know where it is. You came around *with* to my office with it.

A. I have got it.

Mr. MORAN: Is that in the case?

Mr. BROWN: It is not in the case, but we are perfectly willing to stipulation.

A. There was a stipulation entered into between Mr. Brown, Mr. Vrooman and myself that the Financial Chronicle should be regarded as reliable authority upon the market prices of stocks.

Q. At any time?

A. At any time.

The COURT: Is that in evidence, the Financial Chronicle?

395 Mr. BROWN: I don't think it is, but we are perfectly willing to stipulate the court may consider as proved anything that appears in the Financial Chronicle as to the quotations of Metropolitan Traction stock; that it is to be considered the market value of that day, of that stock at any date.

Mr. VROOMAN: Where is the Chronicle?

Mr. BROWN: It is in the public library, or the stock exchange or the law library. I guess. I don't think it cuts any figure, the question of damages here, myself.

Mr. MORAN: There is some evidence that we have not got here to-night that we desire to put in. We do not desire to delay the other side.

Mr. BROWN: We want to know your case before we commence.

Mr. MORAN: You know our case now.

Mr. BROWN: You have put in considerable this time that you didn't put in before.

Mr. VROOMAN: In order to make certain the entire account is in we desire to offer the balance of Mr. Burke's account.

The COURT: Yes, the whole account went in.

Mr. VROOMAN: In order to avoid that I offer pages 526 and 585 of the ledger. (These are found in following pages.

396 Counsel for plaintiff desires it admitted that the Financial Chronicle is reliable authority on the market prices of stocks therein quoted, that the prices so quoted are from actual sales and that the highest market price of Metropolitan Traction stocks as shown by said Chronicle were as follows on the following days:

On June 4, 1895, $97. per share
On June 18 1895, $97.⅜ per share
On June 19, 1895, $97.¼ per share
On June 20 1895, $98.⅜ per share
On June 21 1895, $100.¼ per share
On June 25 1895, $103.¼ per share
On July 6 1895, $103.½ per share
On Nov. 19 1895, $115. per share
On April 29 1899 $247.¾ per share

Counsel for defendants admit the fact so to be, insisting however that all such quotations are irrelevant and immaterial as evidence in this cause.

397 Court met at 10 o'clock, a. m, January 7th, 1901.

CHARLES L. BOYD, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. Burke, and testified as follows:

Q. What is your name?
A. Charles L. Boyd.
Q. Where do you live?
A. 486 East 42nd street.
Q. In this city?
A. Chicago, Illinois.
Q. How long have you resided in Chicago?
A. I have lived here 51 years.
Q. What has been your business Mr. Boyd for the last 20 years?
A. I have been receiver's business, acting and working for receivers.
Q. Have charge of estate during that time?
A. Yes, sir, several hundred.
Q. Have you had any experience in closing up the business of insolvent firms?
A. Yes sir.
Q. To what extent?
A. Well, I have handled quite a number of banks, several insurance companies, mercantile, manufacturers and all kinds of business during that time.
Q. In what business were you employed about the 20th of May 1895?
398 A. I was chief clerk for the Chicago Title & Trust Company.
Q. Receiver in the case of Valentine *vs.* Crawford?
A. Yes sir.
Q. What connection if any, did you have with the insolvent firm of Crawford & Valentine?
A. I had charge of the estate from the commencement and for several months after that.
Q. When did you take charge of it?
A. I took charge on the 20th of May.
Q. What year?
A. 1895. I proceeded with the order of court appointing the Chicago Title & Trust Company receiver, to the office of Crawford & Valentine at 118 La Salle street I think it was.
Q. In what business was Crawford & Valentine—what were they engaged in?
A. They were in the brokerage business.
Q. You proceeded you say to the office?

A. Of Crawford & Valentine, yes.
Q. On that day?
A. Yes sir.
Q. About what time on that day?
A. Between 11 o'clock and twelve o'clock, it was before noon, and took possession of the office and the books and papers on behalf of the receiver.
Q. What did you then do?
A. I then instructed the book-keepers to close up the books, after taking possession of all of the papers that I could, making
399 inventory memorands and instructing the book-keeper to close up the books.
Q. Who were the parties that you employed to close up the books?
A. There was a Mr. Campbell who was one of the book-keepers; then there was Mr. Kilgore, who said he was——
Q. What was his full name—Joseph T. Kilgore?
A. I think that was the name, yes sir.
The COURT: Haven't you been all over this ground before? Any dispute about this? That has been shown, that won't be disputed. He was one of the clerks of the old firm, wasn't he?
Mr. BURKE: What was he?
A. He said he was manager for the firm.
Q. Will you take the ledger up where you can handle it. Just look at that and tell the court whether it is the ledger of Crawford & Valentine?
A. Yes sir, this is the ledger of Crawford & Valentine which I took possession of on that day.
Q. Now state to the court Mr. Boyd if you please how you closed the account?
A. Well, I ordered all of the entries made upon that date to be made in red ink.
Q. From what date?
A. From the 20th of May, 1895.
Q. I will ask you right here now whether any entries were made in the books of Crawford & Valentine, after you took possession of them, except such as were made under your directions?
400 A. Well, I don't think they were, but my instructions were to make them—that is my instructions were to the book-keeper to make such entries as were necessary to close the account.
Q. No other person had possession of the books after you took possession of them except the parties you employed to close up the books?
A. No sir, they were in the possession of the Chicago Title & Trust Company so far as I know as long as I was in their employ.
Q. Now how were the accounts closed?—what was the method of closing them where the customers appeared to be "long" in stocks or "short" in stocks?
A. Well, where there accounts appeared as if they had stock on hand——

Q. Yes?

A. (Continuing:) And there was no stock to be found, why that account was closed at the highest price or the price during the day of the 21st of May I think it was.

The COURT: Highest price?

A. Highest market price, regular market price of the stock.

Mr. BURKE:

Q. That is if the customer appeared to have stocks what was done?

A. Why the account was credited at the market price.

The COURT: Of the stocks?

A. Of the stocks.

Mr. BURKE: Without anything more—no sale made?

401 A. No sale made because we had no stock.

Q. Now supposing the customer appeared to have stocks sold short what kind of ane entry would you make in a case of that kind?

A. Why, an entry would be made as if the stock had been purchased at the market price on that date.

Q. That is you charged him with the market price of the stock that day if he appeared to be short?

A. Yes sir.

Q. And you credited him with the market price of the stock that day if he appeared to be long?

A. Yes sir.

Q. And closed the account in that way?

A. Yes sir.

The COURT: In other words you put on the papers or books the result of what it would have been if you made a sale or purchase?

A. Yes sir.

Q. Without making a sale or purchase?

A. Yes sir.

Mr. BURKE: Will you please turn to R. C. Crawford's local account, page 201, turn to the close of the accounts, where you balance them. Have you got them?

A. Yes sir.

Q. What was the result of the closing of that account?

A. It shows a debit balance of $36,893.89.

Q. That R. C. Crawford owed?

A. Showing a debit balance.

Q. Against him?

A. Yes sir.

Q. On the books?

A. Yes sir.

Q. Now turn to page 233, his No. 2 account?

402 The COURT: I think that is the account we already had.

Mr. BURKE: No I am showing the result.

Q. What was the result of the closing of that account—his No. 2 account?
A. That shows a debit balance of $15,867.82.
Q. Now turn to his No. 3 account, page 234?
A. That account appears to be closed.
Mr. PENCE: What account is that?
A. No. 3, R. C. Crawford's.
The COURT: That is closed?
A. Closed.

Mr. BURKE:

Q. No balance to it?
A. Balance to J. T. Kilgore's credit—account closed, no balance—the balance of that account was placed to the credit of J. T. Kilgore.
Q. Now turn to New York account, page 220—it is carried from that page to page 224 isn't it?
A. Yes sir.
Q. It is closed is it on page 228?
A. Yes sir.
Q. What was the result there?
A. Shows a debit balance of $26,153.28.
Q. Against him?
A. Yes sir.
Q. Turn to special account page 229—have you got it?
A. Yes sir.
Q. What was the result of the closing of his account there?
A. That appears to be closed—abalanced.
Q. What was the result?
A. No debt or credit balance there—just closed up.
Q. Please turn now to E. A. Valentine's account on page 245—have you got it?
A. Yes sir.
403 Q. What was the result of the closing of his account?
A. Shows a debit balance of $7,112.52.
Q. Against him?
A. Yes sir.
Q. Turn now to his No. 2 account on page 252, what was the result of the closing of the account?
A. Shows the debit balance of $14,957.10.
Q. Now turn to "stocks and bonds" account, closed on page 395—have you found it?
Mr. VROOMAN: That is in evidence, isn't it?
Mr. BURKE: What was the result of the closing of that account?
A. That shows a debit balance of $17,932.95, and also it has a memoranda here of "Long 83 shares New York Biscuit, 50 shares Chicago Packing and Provision Company and 200 shares of Chicago Brewing and Malting Company," and on the credit side it says "Short 100 shares of street car line and 50 shares of Lake street L."
Q. Now turn to the account of Stanley & Crawford, on page 570. Was that account closed?

A. That account shows a debit balance of $332.23.
Q. Now turn to the account of Stanley & Valentine on page 571?
A. Yes sir.
Q. Tell me what was the result of the closing of that account?
A. This account was closed on April 30th by a debit bal-
404 ance charged to Stanley & Crawford's account, just referred to on page 570.
The COURT: It was balanced at the time of the failure?
A. It was balanced at the time of the failure.
Mr. BURKE: Turn to the account of P. E. Stanley.
Mr. BROWN: Isn't that immaterial?
The COURT: The books are already in, all of these accounts. In arguing why can't you call attention to that. All of these items are already in evidence.
Mr. BROWN: I dislike to object to anything in the books because we don't want to conceal anything.
The COURT: Hand them to your counsel, and in arguing they will call my attention to any particular item.
Mr. BURKE: There is one account I want to show.
The COURT: Isn't it already in evidence?
Mr. BURKE: It is in regard to J. R. Wilkins, and the changing of the account. Will you turn to account of J. R. Wilkins on page 479? That your honor will remember was testified to as having been changed.
Q. How do you find it on the book?
A. It appears to have been changed.
Q. From what to what?
A. It appears to have been changed from Jos. R. Wilkins to Jas. R. Watkins.
Q. Was that change made by you?
A. No sir.
Q. Do you know how it was made?
A. No sir.
Q. Do you know when it was made?
A. No sir.
Q. In what shape was it when it came into your hands?
405 A. I can't say positively but I think it was in that shape
The COURT: In the present form?
A. Yes sir; if I may be allowed I will state my reasons.
The COURT: Yes.
—. The reason is this: I made up a list of the debtors and creditors immediately after these came into the possession of the receiver, and I have the account "Joseph R. Watkins," and that is the reason I believe it was not changed at the time it came.
Q. You mean it was not changed after?
A. After it came into the hands of the receiver.

Mr. BROWN:

Q. You said this account was made up three or four days after this?

A. Yes sir.
Q. It might have been made in three or four days?
A. It might have.
Q. These books were in the hands of Mr. Kilgore and Mr. Campbell?
A. They were in the hands of Mr. Kilgore and Mr. Campbell yes, in a room separated from the office.

(Cross-examination waived.)

406 CHARLES M. WALKER, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. Burke and testified as follows:

Q. What is your full name?
A. Charles M. Walker.
Q. What is your business and occupation?
A. I am a lawyer.
Q. Did you know R. C. Crawford and E. A. Valentine in 1894 and 1895?
A. I did.
Q. Did you ever have any business with them?
A. Yes sir.
Q. I hand you now a paper which you will please look at, and ask you if that is a bill you rendered to the receiver for your professional services?
A. Yes sir, it is.
Q. About October 1st 1894 was there an account put in your hands in favor of Crawford & Valentine and against one I. Hodson for about $35,000?
A. Yes sir.
Q. By R. C. Crawford?
A. Yes sir.
Q. State Mr. Walker what efforts you made to collect that account?
A. Why I remember of having written a number of times about it, and having made inquiries.
Q. Of whom?
A. I really can't say now, it is so long ago; had a number of consultations with them in regard to the matter. I have really forgotten the incident.
Q. How long did you have the account?
A. That I can't say; some time.
407 Q. Perhaps that might refresh your recollection, of about how long you had the account?
A. Well, from this I should judge I had it from about the first of October to the first of March.
Q. The first of October of what year?
A. 1894 to the first of March 1895.
Q. Did you collect it?

A. No, I didn't collect it.

Q. Why?

A. Couldn't, because the man was not good for it, and was away from here besides.

Q. Look at the second item in that account and I will ask you if Crawford & Valentine, or either of them, placed in your hands an account against anyone else except I. Hodson?

A. Yes sir, here is a charge here for services for collecting an account against Dr. Meers at Kenosha.

Q. Did you collect that?

A. I don't remember whether I did or not; I don't remember how much the account was for now.

Q. Is your account O. K.'d by R. C. Crawford?

A. Yes sir.

Cross examination.

By Mr. BROWN:

Q. I see the services in the Hodson matter Mr. Walker run from October 1st to March 1st?

A. I see it from that bill; I have no recollection of it.

Q. You know what your instructions were—you remember
408 about that?—were they to bring suit or negotiate for settlement or get securities or what?

A. As I remember it, it was a desperate account, and they put the matter into my hands to have the best done with it that could be done; I don't remember now just what specific instructions were given, except what I did to collect it.

Q. Mr. Walker, are you quite sure that this Hodson account was put into your hands October 1st, or that this bill of yours covered all the conversations and matters that you had concerning the business up to March 1st, and some time subsequent to October 1st?

A. You mean whether the account was actually placed in my hands on the first of October?

Q. Yes, whether you remember that, or whether you had it as early as that, or whether it may have been placed in your hands later, and your bill was made to include five months, between October 1st and March 1st, or whenever your services occurred?

A. They began consulting me about the first of October at any rate, but whether the account actually came into my hands on that day I don't remember.

Q. Now if it appears from the books Mr. Walker that upon the 1st of October Mr. Hodson had a credit balance with the firm, what would you say then?

Mr. BURKE: That is the most false assumption I ever heard.

A. I should still say——

409 Mr. BROWN: That you had been consulted about the account?

A. That these people, that they began consulting me about the Hodson account on the first of October.

Re-direct examination.

By Mr. BURKE:

Q. Didn't they tell you Mr. Walker when they handed it to you it wasn't good for anything?
A. It was a desperate account.
Q. The Hodson account?
A. I understood it was a desperate account, as I remember it.
Q. That is all.

Mr. BURKE: We now offer in evidence in connection with the books and the accounts in the books the petition of the defendants in bankruptcy which contains a list of all their creditors that existed on the date of the failure, on the 20th day of May 1894, and a list of the amounts due to each and the character of the indebtedness.

Mr. BROWN: What is this offer for?

Mr. BURKE: This is a petition in bankruptcy.

Which said petition, so offered in evidence is in the words and figures following, to-wit:

410 To the Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois:

The petition of Richard C. Crawford and E. Archibald Valentine respectfully represents that your petitioners have been partners under the firm name of Crawford & Valentine, having their principal place of business at Chicago in the county of Cook and district and State of Illinois, for the greater portion of the six months next preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked "A," and verified by the oath of your petitioners, contains a full and true statement of all the debts of said partners, and as far as possible the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked "B," verified by the oath of your petit-oners, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said Richard C. Crawford further states that the schedule hereto annexed, marked "C," verified by his oath, contains a full and true statement of all his individual debts, and as far as possible

the names and places of residence of his creditors, and such
411 further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked "D," verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said E. Archibald Valentine further states that the schedule hereto annexed, marked "E," verified by his oath, contains a full and true statement of all his individual debts, and as far as possible the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed marked "F," verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that the said firm, and the individual members thereof, may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

CRAWFORD & VALENTINE.
RICHARD C. CRAWFORD.
E. ARCHIBALD VALENTINE.

FLOWER, SMITH & MUSGRAVE AND
PECKHAM, BROWN & PACKARD,
Attorneys for Petitioners.

412 Richard C. Crawford and E. Archibald Valentine, the petitioning debtors mentioned and describee in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

RICHARD C. CRAWFORD,
E. ARCHIBALD VALENTINE,
Petitioners.

Subscribed and sworn to before me this 29th day of April, A. D. 1899.

VICTOR M. HARDING,
[NOTARIAL SEAL.] *Notary Public.*

FORMS IN BANKRUPTCY,
As adopted and established by the U. S Supreme Court.

SCHEDULE A.

Creditors whose Claims are

(N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be st
in full, and any claim by way of set off stated

REFERENCE TO LEDGER OR VOUCHER	NAMES OF CREDITORS.	RESIDENCE (if unknown that fact must be stated)	WHEN AND WHERE C
Copy	A. H. Andrews & Co.	304 Wabash Ave. Chicago	Chicago in
	F. L. Feager	108 La Salle St. "	"
	Burton Johnson	C. & N. W. R. R. Gen. Office "	"
	A. L. Baker	Continental Bank Bldg "	"
	F. G. Mitchell	1016 Ashland Bldg. "	"
	J. W. Kilmore	Adams Exp. Bldg. "	"
	A. J. Canfield	Chicago, Ill.	"
	A. Warner	" "	"
	Charles B. Evans	Montauk Blk. Chicago	"
	Warren L. Beckwith	Chicago Work Exch. "	"
	Frank E. Coyner	Internal Rev. Office "	"
	Estate of John L. Hopkins	Philadelphia, Pa	"
	E. L. L. Swayne	New York City	"
	Wm. M. Salisbury	109 Madison St. Chicago	"
	Int. R. R. Publishing Co	Chicago, Ill.	"
	W. H. & J. H. Moore	Amer. Exp. Bldg. "	"
	Maud Baggett	Chicago, Ill.	"
	Frances M. Pratt	" "	"
	Estate of J. Chamberlain	" "	"
	E. Dingley	" "	"
	Simon W. Thanes	Work Exch. Bldg. Chicago	"
	C. H. Kellogman,	Kenosha, Wis.	"
	anna Crawford,	address unknown	"

IN BANKRUPTCY,
shed by the U. S Supreme Court.

Printed and for Sale by the Independent-Times Printing Co., Streator, Ill.

SCHEDULE A. (3)

Creditors whose Claims are Unsecured.

nd residence (or either) of any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set off stated in the schedule of property.

NAMES OF CREDITORS.	RESIDENCE (if unknown that fact must be stated)	WHEN AND WHERE CONTRACTED.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c. and whether contracted as partner of joint contractor with any other person, and if so with whom	AMOUNT. $	AMOUNT. c
J. K. Andrews & Co.	304 Wabash Ave. Chicago	Chicago in 1894 & 5	Balance of account for Book transactions	4 05	80
C. L. Fraser,	108 LaSalle St. "	" " "	" " " "	2 58	90
Burton Johnson	Co. N. W. R. A. Gen. Office "	" " "	" " " "	8 66	25
A. L. Baker	Continental Bank Bldg "	" " "	" " " "	3 42	46
C. G. Mitchell	1016 Ashland Blg. "	" " "	" " " "	8 87	64
W. Kilmore	Adams Exp. Bldg. "	" " "	" " " "	5 36	67
A. J. Canfield	Chicago, Ill.	" " "	" " " "	1 02	40
C. Manier	" "	" " "	" " " "	74	38
Charles B. Evans,	Mortland Blk. Chicago	" " "	" " " "	8 26	42
Warren L. Beckwith	Chicago Stock Exch. "	" " "	" " " "	34	00
Frank E. Coyne,	Internal Rev. Office "	" " "	" " " "	3 41	09
Est of John L. Hopkins	Philadelphia, Pa	" " "	" " " "	153	00
W. L. Swayne	New York City,	" " "	" " " "	85	00
Mrs M. Salisbury	109 Madison St. Chicago	" " "	" " " "	9 56	25
Inter R. R. Publishing Co	Chicago, Ill.	" " "	" " " "	17	00
H. & J. H. Moore	Amer. Exp. Bldg. "	" " "	" " " "	5 18	77
Paul Bagget	Chicago, Ill.	" " "	" " " "	5 36	66
Frances M. Pratt	" "	" " "	" " " "	24	23
Est of J. Thomasers	" "	" " "	" " " "	10 52	21
E. Dinsley	" "	" " "	" " " "	10 70	81
Simon P. Thanas	Book Exch. Bldg. Chicago	" " "	" " " "	2 12	50
E. H. Kellogman,	Kenosha, Wis.	" " "	"	2 792.	14
Emma Crawford,	address unknown	" "	" Crawford & Valentine. "	Total Petitioners	127.89

FORMS IN BANKRUPTCY,
As adopted and established by the U. S Supreme Court.

Printed and for Sa

SCHEDULE A. (3)

Creditors whose Claims are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debt
in full, and any claim by way of set off stated in the schedule of property.

Copy

REFERENCE TO LEDGER OR VOUCHER	NAMES OF CREDITORS.	RESIDENCE (if unknown that fact must be stated)	WHEN AND WHERE CONTRACTED.	Nature and consideration of the debt, and whether a bill of exchange, promissory note, &c. and wh partner of joint contractor with any other person
	Minnie N. Barnes	Houghton Apartment Bldg. Chicago	Chicago in 1894 - 5	Balance of account for Boa
	J. R. Owen	% Lord Owen & Co.	" " "	" " "
	Dr. J. H. Baker	" Chicago Veterinary College	" " "	" " "
	Michael J. Riley	Chicago, Ill.	" " "	" " for Tales
	Waukesha Mineral Springs Co.	Chicago, Ill.	" " "	" " " Mine
	Western Union Telegraph Co.	Western Union Bldg. Chicago	" " "	" " " Telegr
	Chicago Evening Post	Evening Post " "	" " "	" " " Ad
	The Economist	Montauk " "	" " "	" " "
	Chicago Evening Journal	Evening Journal " "	" " "	" " "
	William C. Seward	New York City	" " "	assignee account from "Mo and Trust Co. of Chicago, d advances in judgment "M Superior Court of Cook County
	Merchants Loan & Trust Co.	Chicago, Ill.	" " "	Balance of account for s actions and money ad
	L. D. Mattes	Chicago Board Trade Bldg Chicago	" " "	Balance of account for stock
	Charles M. Walker	" " " "	" " "	" " " legal
	B. M. Kendall	Chicago, Ill.	" " "	" " " stock
	Catherine L. Baker	% A. H. Baker, Chicago Veterinary College, Chicago	" " "	" " " " Note of your petitioners h term given in settlement, exact amount or the date them are unknown to you

Crawford & Vale

N BANKRUPTCY,
d by the U. S Supreme Court.

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SCHEDULE A. (3)

Creditors whose Claims are Unsecured.

l residence (or either) of any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set off stated in the schedule of property.

NAMES OF CREDITORS.	RESIDENCE (if unknown that fact must be stated)	WHEN AND WHERE CONTRACTED.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c. and whether contracted as partner of joint contractor with any other person, and if so with whom	AMOUNT. $	AMOUNT. c
nnie N. Barnes	Houghton Apartment Bldg. Chicago	Chicago in 1894-5	Balance of account for stock transactions	56	89 70
R. Owen	C/o Lord Owen & Co.	" " "	" " " "	33	52 74
J. H. Baker	" Chicago Veterinary College	" " "	" " " "	2	28 98
chard J. Kiley	Chicago, Ill.	" " "	" " for Toilet Supplies		2 55
ela Mineral Springs Co.	Chicago, Ill.	" " "	" " Mineral Waters		3 19
n Union Telegraph Co.	Western Union Bldg. Chicago	" " "	" " Telegraph Service		19 90
icago Evening Post	Evening Post " "	" " "	" " Advertising		5 44
Economist	Montauk " "	" " "	" " " "		20 91
icago Evening Journal	Evening Journal " "	" " "	" " " "		2 55
illiam C. Newall	New York City	" " "	assigned account from "Montauk Loan and Trust Co. of Chicago, due for money advanced in Judgment May 6, 1898 in Superior Court of Cook County No. 190457	1987	8 19
ntauk Loan & Trust Co.	Chicago, Ill.	" " "	Balance of account for stock transactions and money advanced	1077	4 08
D. Mather,	Chicago Board Exch. Bldg Chicago	" " "	Balance of account for stock transactions	6	75 26
arles M. Walker	" " "	" " "	" " " legal services	2	55 00
W. Kendall,	Chicago, Ill.	" " "	" " " stock transactions	15	20 18
thonia L. Baker	C/o A. H. Baker, Chicago Veterinary College, Chicago	" " "	Note of your petitioners have since been given in settlement, but the exact amount or the details concerning them are unknown to your petitioners	11	70 00
			TOTAL		

Crawford & Valentine PETITIONER.

FORMS IN BANKRUPTCY,
As adopted and established by the U. S. Supreme Court.

Printed and for sale by the INDEPEND

SCHEDULE A. (3)

Creditors Whose Claims are Unsecured.

(N. B.--When the name and residence (or either) or any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

REFERENCE TO LEDGER OR VOUCHER	NAMES OF HOLDERS AS FAR AS KNOWN	RESIDENCE (if unknown that fact must be stated)	PLACE WHERE CONTRACTED	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as partner of joint contractor with any other person, and if so with whom.
M.	Estate Geo. M. Pullman	Rob't T. Lincoln, Executor Pullman Bldg. Chicago	Chicago in 1894-5	Balance of account for stock trans Judgment recovered in Circuit Cou Cook Co. No. 175761 on Mch. 28, 1
	Charles W. Barnes	Clifton House, Chicago	" "	Balance of account for Stock Trans
	All the foregoing claims were filed with the Receiver, Pro Chicago Title & Trust Co. appointed			
	said Bankrupt firm of Crawford & Valentine in suit No. 143			of 41 in Circuit Court of Cook C
	and a 15% dividend was paid Harrison, the amount stated are			the balances due after deducti
	said 15% dividend.			
	Dietz Bros. & Co.	Phila. Pa.	Chicago in 1894 & 5	Balance of account for Stock Transa in judgment Sept 24, 96 in Circuit Cou
	A. B. Baker	Chicago, Ill.	" "	Cook Co. No. 158237 Balance of account for Stock Transa
	Annie Campbell	"	" "	
	Victor Falkenau	108 LaSalle St. Chicago,	" "	Balance of account for Stock Transa for which there is judgment not given, upon date May 24 1897 for payable to Victor & Louis Falken
	E. E. Chase	State of Texas, other address unknown,	" "	judgment with 5% interest Balance of account for Stock Trans upon which judgment for $94.22 in favor of July 2, 1898 in the Circu Court of Cook County No. 149583
	John E. Burke,	95 Washington St. Chicag	" "	Balance of account for Stock Tra

Crawford & Valentin

N BANKRUPTCY,
ed by the U. S. Supreme Court.

Printed and for sale by the INDEPENDENT-TIMES PRINTING CO., Streator, Ill.

SCHEDULE A. (3)

Creditors Whose Claims are Unsecured.

(N. B.--When the name and residence (or either) or any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

ES OF HOLDERS AS FAR AS KNOWN	RESIDENCE (If unknown that fact must be stated)	PLACE WHERE CONTRACTED	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as partner of joint contractor with any other person, and if so with whom.	AMOUNT $	AMOUNT c
to Geo. M. Pullman	Robt. T. Lincoln, Evanston Pumps Bldg. Chicago	Chicago in 1894-5	Balance of account for stock transaction Judgment recovered in Circuit Court Cook Co. No. 175761 on Mch. 28. 1898.	3978	00
arles H. Barnes	Clifton House, Chicago	" "	Balance of account for Stock Transaction	1014	70
the foregoing	claim were filed with	the Receiver, The Chicago Title & Trust Co. appointed for			
's Bankrupt firm	of Crawford & Valentine in suit No. 143	044 in Circuit Court of Cook County			
d a 15% dividend	was paid Harrison, the amount stated are	the balances due after deducting			
's 15% dividend.					
p Bros. & Co.	Phila. Pa.	Chicago in 1894 & 5	Balance of account for Stock Transaction in judgment #42496 in Circuit Court	372	72
H. Baker	Chicago, Ill.	" "	Cook Co. No. 158223 Balance of account for Stock Transaction	269	37
nis Campbell	" "	" "	" " " " " "	150	33
ton Pal Kenan	108 LaSalle St. Chicago,	" "	Balance of account for Stock Transaction for which there is judgment pretty soon given, 1898 dated May 24 1897 for 1832 payable to Clinton & Louis Pal Kenan on	2584	00
E. Chase	State of Texas, other address unknown,	" "	defendant with 5% interest Balance of account for Stock Transaction upon which judgment for $494 was recovered July 24 1896 in the Circuit Court of Cook County No. 149583	494	22
lm E. Burke,	95 Washington St. Chicago	" "	Balance of account for Stock Transaction	746	54
			Total		

Crawford & Valentine. Petitioner.

413 SCHEDULE "A."

Statement of all debts of bankrupt firm of Crawford and Valentine, composed of Richard C. Crawford and E. Archibald Valentine.

SCHEDULE "A" (1).

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

(1.) Taxes and debts due and owing to the United States: None.
(2.) Taxes due and owing to the State of Illinois, or to any county, district, or municipality thereof: None.
(3.) Wages due workmen, clerks, or servants: None.
(4.) Other debts having priority by law: None.

CRAWFORD & VALENTINE.

414 SCHEDULE "A" (2).

Creditors holding securities: None.

CRAWFORD & VALENTINE.

(Here follow fac-similes marked pp. 415, 416, and 417.)

418 SCHEDULE "A" (4).

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers: None.

CRAWFORD & VALENTINE.

419 SCHEDULE "A" (5).

Accommodation paper: None.

CRAWFORD & VALENTINE.

420 *Oath to Schedule "A."*

UNITED STATES OF AMERICA, } ss:
District of Illinois, }

On this 29th day of April, A. D. 1899, before me personally came Richard C. Crawford and E. Archibald Valentine, the persons mentioned in and who subscribed to the foregoing schedule, and who being first duly sworn by me did severally declare the said schedule to be a statement of all their debts, in accordance, with the acts of Congress relating to bankruptcy.

[NOTARIAL SEAL.] VICTOR M. HARDING,
Notary Public.

421 SCHEDULE "B."

Statement of all property of bankrupt firm of Crawford & Valentine, composed of Richard C. Crawford & *and* E. Archibald Valentine.

SCHEDULE "B" (1).

Real estate: None.

CRAWFORD & VALENTINE.

422 SCHEDULE "B" (2).

Personal property: None.

CRAWFORD & VALENTINE.

423 SCHEDULE "B" (3).

Choses in action: None.

CRAWFORD & VALENTINE.

424 SCHEDULE "B" (4).

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge: None.

CRAWFORD & VALENTINE.

425 SCHEDULE "B" (5).

A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use: None.

CRAWFORD & VALENTINE.

426 SCHEDULE "B" (6).

Books, papers, deeds, and writings relating to bankrupt firm's business and estates.

Books: None.
Deeds: None.
Papers: None.

Your petitioners state that a bill was filed in the circuit court of Cook county, in cause number 143,041, on May 20th, 1895, by E. Archibald Valentine against Richard C. Crawford, asking for a dissolution of said bankrupt firm of Crawford & Valentine; that the Chicago Title & Trust Company was duly appointed receiver in said cause on May 21st, 1895; that said receiver took charge of the assets of said firm and has since distributed the same and has paid to such creditors as filed their claims and whose claims were allowed a 15 % dividend upon May 5th 1896. The said cause is still pending.

CRAWFORD & VALENTINE.

427 *Summary of Debts and Assets.*

(From the statements of the bankrupt in Schedules A and B.)

Schedule A. 1 (1)	Taxes and debts due United States....	
" " 1 (2)	Taxes due States, counties, districts and municipalities	
" " 1 (3)	Wages.....	
" " 1 (4)	Other debts preferred by law.....	
Schedule A. 2	Secured claims	
Schedule A. 3	Unsecured claims.....	$142,077 07
Schedule A. 4	Notes and bills which ought to be paid by other parties thereto.....	
Schedule A. 5	Accommodation paper.....	
	Schedule A, total.....	$142,077 07

Schedule B.	1	Real estate .....
Schedule B.	2-*a*	Cash on hand ....
" "	2-*b*	Bills, promissory notes, and securities.....
" "	2-*c*	Stock in trade .....
" "	2-*d*	Household goods, &c.....
" "	2-*e*	Books, prints, and pictures .....
" "	2-*f*	Horses, cows and other animals .....
" "	2-*g*	Carriages and other vehicles .....
" "	2-*h*	Farming stock and implements... ..
" "	2-*i*	Shipping and shares in vessels.....
" "	2-*k*	Machinery, tools, &c.....
" "	2-*l*	Patents, copyrights, and trade marks..
" "	2-*m*	Other personal property.....
Schedule B.	3-*a*	Debts due on open accounts .....
" "	3-*b*	Stocks, negotiable bonds, &c. .....
" "	3-*c*	Policies of insurance .....
" "	3-*d*	Unliquidated claims .....
" "	3-*e*	Deposits of money in banks and elsewhere .....
Schedule B.	4	Property in reversion, remainder, trust, &c.....
Schedule B.	5	Property claimed to be excepted.....
Schedule B.	6	Books, deeds, and papers .....

Schedule B, total.....

CRAWFORD AND VALENTINE.

428 *Oath to Schedule "B."*

UNITED STATES OF AMERICA, }
District of Illinois, } ss:

On this 29th day of April. A. D. 1899, before me personally came Richard C. Crawford and E. Archibald Valentine, the persons mentioned in and who subscribed to the foregoing schedule, and who being by me first duly sworn did severally declare the said schedule to be a statement of all their estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

VICTOR M. HARDING,
Notary Public.

[NOTARIAL SEAL.]

(Here follow fac-similes marked pp. 429 and 430.)

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court.

Individual Creditors of Ric

SCHEDULE C

Creditors Whose Cla

(N. B.--When the name and residence (or either) or any drawe
unknown, the fact must be stated, and also the name and resi
due to each creditor must be stated in full, and any claim by

REFERENCE TO LEDGER OR VOUCHER	NAMES OF CREDITORS	RESIDENCE (If unknown that fact must be stated)	When and whe
Copy	The Northern Trust Co. Trustee for the Stewart Building	"The Rookery" Chicago. Illinois	Chicago. 1898
	Clayton B. Knowlton Albert W. Adcock & Herman J. Teufel copartners as Knowlton Adcock & Teufel.	66 State St. Chicago. Illinois	Date not Chicago.
	Dunlap & Co,	Palmer House Chicago, Illinois	August. Chicago.

BANKRUPTCY,
by the U. S. Supreme Court.

Individual Creditors of Richard C. Crawford

Printed and for sale by the INDEPENDENT-TIMES PRINTING Co., Streator, Ill.

SCHEDULE C (3).

Creditors Whose Claims are Unsecured.

(N. B.--When the name and residence (or either) or any drawer, maker, indorser or holder of any bill or note, &c., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

NAMES OF CREDITORS	RESIDENCE (if unknown that fact must be stated)	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as partner of joint contractor with any other person, and if so with whom.	AMOUNT $	AMOUNT cts.
Northern Trust Co. Trustee for the Rookery Building	"The Rookery" Chicago Illinois	Chicago October 1898	Guaranty of Lease to Crawford & Co (a corporation) of premises #53 Washington St. from Oct 1st 1898 to May 1, 1899, Rent due thereon, balance	125	00
Clayton B. Howard & Albert W. Adgate & Herman J. Penfold Partners as Howard, Adgate & Penfold.	#66 State St. Chicago Illinois	Date not known Chicago.	Judgment note given in settlement of an account amount due, about	60	00
Knapp & Co.	Palmer House Chicago, Illinois	August 94 Chicago Illinois	Merchandise sold	12	00
			Total.	186	00

Richard C. Crawford ..... Petitioner.

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court.

Printed and for sale by the INDEPENDENT-TI

SCHEDULE C (5)

Accommodation Paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor o accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

REFERENCE TO LEDGER OR VOUCHER	NAMES OF HOLDERS	RESIDENCE (if unknown that fact must be stated)	NAMES AND RESIDENCES OF PERSONS ACCOMMODATED.	PLACE WHERE CONTRACTED	Whether liability was contracted as part or joint-contractor, or with any o person, and if so, with whom.
					To

Richard C. Crawford

UNITED STATES OF AMERICA,
Northern DISTRICT OF Illinois } ss.

OATH TO SCHEDULE A.

On this 28th day of April A. D. 1899, before me personally came Richard C. Crawford who subscribed to the foregoing schedule, and who being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this 28th day of April A. D. 1899.

George Packard
Notary

Notarial Seal

BANKRUPTCY,
by the U. S. Supreme Court.

Printed and for sale by the INDEPENDENT-TIMES PRINTING CO., Streator, Ill

SCHEDULE C (5)

Accommodation Paper.

ce or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

NAMES OF HOLDERS	RESIDENCE (if unknown that fact must be stated)	NAMES AND RESIDENCES OF PERSONS ACCOMMODATED.	PLACE WHERE CONTRACTED	Whether liability was contracted as partner or joint-contractor, or with any other person, and if so, with whom.	AMOUNT $	AMOUNT c
				Total,	1862	00

Richard C. Crawford Petitioner.

STATES OF AMERICA, } ss.
DISTRICT OF Illinois }

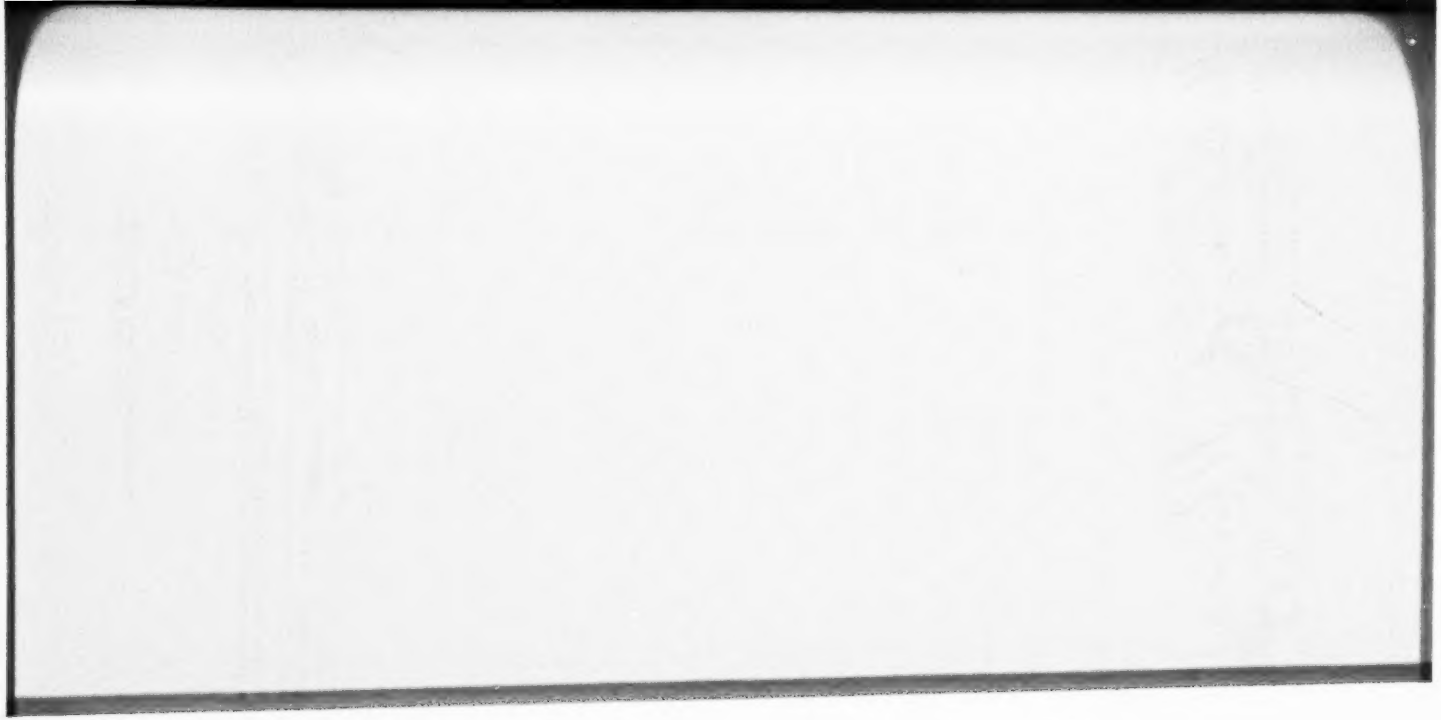
OATH TO SCHEDULE A.

28th day of April A. D. 1899, before me personally came Richard C. Crawford, the person mentioned in and g schedule, and who being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

n to before me this 28th day of April A. D. 1899. George Packard

Notary Public
(Official Character.)

Notarial



431 SCHEDULE D (2).

Individual Personal Property of Richard C. Crawford.

A. Cash on hand	25 00
B. Bills of exchange, promissory notes, or securities of any description, (each to be set out separately)	.....
C. Stock in trade, in — business of —— —— at —— of the value of	.....
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz	.....
Wearing apparel	200 00
Watch and jewelry	175 00
E. Books, prints and pictures, viz	.....
F. Horses, cows, sheep, and other animals (with number of each), viz	.....

RICHARD C. CRAWFORD.

G. Carriages and other vehicles, viz	.....
H. Farming stock and implements of husbandry, viz	.....
I. Shipping and shares in vessels, viz	.....
K. Machinery, fixtures, apparatus and tools used in business; with the place where each is situated, viz	.....
L. Patents, copyrights and trademarks, viz	.....
M. Goods or personal property of any other description; with the place where each is situated, viz	.....
Total	400 00

—— ——, *Petitioner.*

Copy.

432 SCHEDULE D (5).

A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

	Valuation $ c.
Military uniforms, arms and equipments.....	
Property claimed to be exempted by State laws, its valuation, whether real or personal; its description and present use, and reference given to the statute of the State creating the exemption.	
Cash on hand.....	25 00
Wearing apparel.....	200 00
Watch and jewelry.....	175 00
Claimed to be exempt by section 1 of an act of the legislature of the State of Illinois to exempt certain personal property from attachment and sale on execution and from distress for rent in force July 1, 1877, the petitioner being the head of a family and residing with the same at Chicago, Illinois.	
Total.....	400 00

RICHARD C. CRAWFORD, *Petitioner.*

433 SCHEDULE D (6).

Books, papers, deeds, and writings relating to bankrupt's business and estate.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore at any time in my possession or under my custody or control, and which

as now held by the parties whose names are hereinafter set forth, with the reasons for their custody for the same:

Books.....
Deeds.....
Papers, etc.....

RICHARD C. CRAWFORD, *Petitioner.*

Oath to Schedule B.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

On this 28th day of April A. D. 1899, before me personally came Richard C. Crawford the person mentioned in and who subscribed to the foregoing schedule, and who being by me first duly sworn to did declare the said schedule to be a true statement of all his individual estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

GEORGE PACKARD, [SEAL.]
Notary Public.
(Official character.)

634 SCHEDULE "E."

Statement of all the individual debts of the bankrupt E. Archibald Valentine.

SCHEDULE "E" (1).

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

(1.) Taxes and debts due the United States: None.
(2.) Taxes due and owing to the State of Illinois, or to any county, district, or municipality thereof: None.
(3.) Wages due workmen, clerks or servants: None.
(4.) Other debts having priority by law: None.

E. ARCHIBALD VALENTINE.

635 SCHEDULE "E" (2).

Creditors Holding Securities.

The bankrupt owes the State Mutual Life Assurance Company of Worcester, Massachusetts, for premiums due and unpaid upon a policy of insurance for $2000 issued on the life of the bankrupt, and

payable to his estate, the sum of about $60. This indebtedness is evidenced by the bankrupt's notes, held by said insurance company. The policy of insurance referred to and which is elsewhere scheduled has a cash surrender value of $55.98 which would be subject to the payment of the above indebtedness.

E. ARCHIBALD VALENTINE.

436 SCHEDULE "E" (3).

Creditors whose claims are unsecured: None.

E. ARCHIBALD VALENTINE.

437 SCHEDULE "E" (4).

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or endorsers: None.

E. ARCHIBALD VALENTINE.

438 SCHEDULE "E" (5).

Accommodation paper: None.

E. ARCHIBALD VALENTINE.

439 *Oath to Schedule "E."*

UNITED STATES OF AMERICA, *District of Illinois,* } ss:

On this 29th day of April, A. D. 1899, before me personally came E. Archibald Valentine, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his individual debts, in accordance with the acts of Congress relating to bankruptcy.

VICTOR M. HARDING,
Notary Public.

[NOTARIAL SEAL.]

440 SCHEDULE "F."

Statement of all the individual property of the bankrupt E. Archibald Valentine.

SCHEDULE "F" (1).

Real estate: None.

E. ARCHIBALD VALENTINE.

441 SCHEDULE "F" (2).

Personal property.

(a.) Cash on hand: None.
(b.) Bills of exchange, promissory notes, securities, etc.: None.
(c.) Stock in trade: None.
(d.) Household goods and furniture: None.

Wearing apparel: Two suits and two overcoats	$60
Jewelry, gold ring	20
Pearl pin	10
Miscellaneous wearing apparel	15

(e.) Goods or personal property of any other description: None.

E. ARCHIBALD VALENTINE.

442 SCHEDULE "F" (3).

Choses in action.

(a.) Debts due petitioner on open account: None.
(b.) Stocks in incorporated companies, negotiable bonds, etc.: None.
(c.) Policies of insurance: One insurance policy for $3,000, in the State Mutual Life Assurance Company of Worcester, Massachusetts, dated December 17th 1896, on the life of the petitioner, payable to his wife, Helen H. Valentine and upon her death prior to his to his estate.

This policy had a cash surrender value on December — 1898, of $55.98. The insurance company holds petitioner's notes for about $60. given for premium on said policy which are now due and unpaid.

(d.) Unliquidated claims of every nature: None.
(e.) Deposits of money in bank and elsewhere: None.

E. ARCHIBALD VALENTINE.

443 SCHEDULE "F" (4).

Property in reversion, in remainder, or in expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge: None.

E. ARCHIBALD VALENTINE.

444 SCHEDULE "F" (5).

A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation, and, if any portion of it is real estate, its location, description, and present use.

Petitioner's wearing apparel as follows:

2 suits valued at	$30.
2 overcoats valued at	30.
Gold ring valued at	20.
Pearl pin valued at.....	10.
Other wearing apparel valued at.....	15.

The said property is at the abode of said petitioner, number 449 North State street, in the city of Chicago, county of Cook and State of Illinois, and is claimed to be exempt by virtue of the exemption laws of the State of Illinois, section 13, chapter 52, of the act on exemptions in the Revised Statutes of the State of Illinois.

E. ARCHIBALD VALENTINE.

445 SCHEDULE "F" (6).

Books, papers, deeds and writings relating to the bankrupt's business and estate: None.

E. ARCHIBALD VALENTINE.

446 *Oath to Schedule "F."*

UNITED STATES OF AMERICA, *District of Illinois*, } ss:

On this 29th day of April A. D. 1899, before me personally came E. Archibald Valentine, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his individual estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

VICTOR M. HARDING,
[NOTARIAL SEAL.] *Notary Public.*

Petition was filed in the clerk's office of the United States district court for the northern district of Illinois on April 29, 1899.

447 Mr. BURKE: I introduce in evidence the bill of complaint of Edwin A. Valentine against Richard C. Crawford, filed on

May 20th, 1895; I also offer in evidence the order appointing a receiver—a certified copy of the order appointing a receiver; I also offer in evidence the assignment of partnership assets of Crawford & Valentine to the receiver.

The COURT: I hear no objection. Let them go in.

Which said papers so introduced in evidence are in the words and figures following, to-wit:

448 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

To the honorable judges of said court, in chancery sitting:

Your orator, Edward A. Valentine of the city of Chicago, county and State aforesaid, respectfully represents unto your honors that on the 30th day of June A. D. 1894, your orator entered into an agreement with one Richard C. Crawford, of the same place, the defendant hereinafter named, to form a copartnership with him in the business of private bankers and brokers in the buying and selling on commission, and carrying on margins, of stocks and bonds, under the firm name of Crawford and Valentine, for the term of one year, upon the terms and conditions hereinafter stated, to-wit: That the said business should be carried on in the city of Chicago, and that the capital requisite for carrying on the same should be advanced by the said partners in equal shares; that your orator should contribute as his proportion of the same, a membership in the New York stock exchange, the value thereof to be ascertained by taking the difference between the present asking and selling price of the last membership sold, as recorded on the record books of said exchange, and that the said Crawford should contribute a sum of money equal to the value of the said membership, to be ascertained as aforesaid, putting in as part thereof the furniture and fixtures then in the place of business, which had been occupied by the said Crawford. It was further stipulated and agreed that said membership in the New York
449 stock exchange then in the name of your orator, should remain in him, and be held by him in trust, as assets of the partnership. It was further agreed that the said capital and all furniture and fixtures, and whatever might be purchased out of the partnership funds, as well as the gains and profits of the said business, should belong to, and the losses should be borne by, your orator and the said defendant, in equal shares, and if at any time thereafter additional capital should be required, the same should be advanced by the said parties to said agreement in equal shares, and any excessive capital brought in by either party should be considered a debt due to him from the partnership, and should bear interest at the rate of six per cent. (6%) per annum; that proper books of account should be kept of the said business, on the said premises,

in which all dealings and transactions should be entered, and each party should have free access thereto; that each party should be at liberty to draw not to exceed five hundred dollars ($500) monthly for his own private use on account, but not in excess of his presumptive share of the profits, so long only as the said business should be found profitable and permit such drawings without any impairment of said capital; that each partner should devote his whole time, skill and attention to the partnership business, and diligently and faithfully employ himself therein and carry on the same to the greatest advantage of the partnership, and neither partner should engage in any speculative trades for himself, or in the name of the firm; that neither partner should without the consent of the other, draw, accept or sign any bill of exchange, or promissory note, or contract any debt on account of the partnership, or employ
450 any of the moneys or effects thereof, or in any manner pledge the credit thereof except in the usual and regular course of business, nor without the consent of the other enter into any bond, or become surety for any person; that at the expiration of the partnership a statement should be made of its condition, and after payment of all debts the balance should belong to the said partners in equal shares, and be realized and divided accordingly.

Your orator further shows that the said partnership agreement was entered into verbally and subsequently reduced to writing, but was not in fact executed by either of the parties; that in pursuance however of said oral agreement the said parties commenced to carry on the business of private bankers and brokers, as contemplated in the said agreement, and have continued in said business up to the present time.

Your orator further shows that in violation of the terms and conditions of the said agreement, the said defendant Richard C. Crawford has engaged in outside speculations upon the board of trade, and elsewhere, to a very large extent, and has met and sustained serious losses in consequence thereof, and that he has also used the firm funds and drawn checks against its bank account for the purpose of meeting such losses, and in so doing he has not only withdrawn from the business of the said partnership the whole of his original contributions thereto as capital, amounting to about twenty-one thousand dollars ($21,000), but in addition a further sum of not less than twenty-five thousand dollars ($25,000) that in fact the said Crawford has withdrawn for his own use and exhausted more than the original capital invested in the business, and that on Saturday the 18th, inst., in order to cover losses so sustained by
451 him, in private speculation, he made a draft upon the New York correspondents of the firm for seventeen thousand, five hundred dollars ($17,500) and deposited the same in its bank in Chicago, most of which said sum included in said draft was to make good losses sustained by him in his own private speculations in which the firm had no interest.

Your orator further shows that the indebtedness of the said partnership of Crawford & Valentine, so far as he can now estimate the

same, amounts to about seventy thousand dollars ($70,000), if it does not exceed that amount; that its assets consist wholly of the membership in the New York stock exchange aforesaid, about sixty-five thousand dollars ($65,000) in outstanding accounts due to the said firm, of which forty thousand dollars ($40,000) is supposed to be worthless, and the said overdraft of the said Richard C. Crawford to said firm of about forty-six thousand dollars ($46,000), and also its office furniture and fixtures.

Your orator further shows that there is great danger that the New York membership in the stock exchange, which constitutes practically the greater portion of the valuable assets of said partnership may be attached at the suit of some creditor thereby preventing an equal distribution of the assets of said firm among all its creditors; that any delay in the action to be taken herein is likely to prove disastrous to the body of creditors; that your orator believes that it is for the manifest interest of such creditors that a *receiver* should be appointed forthwith to take immediate possession of all of the assets of said partnership, without waiting to serve process or give
452 notice to the defendant before making such appointment.

Forasmuch, therefore, as your orator is without adequate remedy in the premises, except in a court of equity, and to the end that the said Richard C. Crawford, who is made party defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being waived; that the said copartnership may be dissolved and that an account may be taken of all and every of the copartnership dealings and transactions from the time of the commencement thereof, and also an account of the moneys received and paid by them, your orator and the defendant respectively, in regard thereto, and that the defendant may be decreed to pay to your orator, what if anything shall upon an accounting being taken be found to be due to him, your orator being ready and willing to, and hereby offering to pay what if anything shall upon taking said account appear to be due to the said defendant from him, and that a receiver may be forthwith appointed to take possession of the assets of said copartnership and convert the same into money, and out of the proceeds thereof to distribute the same ratably among the creditors of said copartnership, and that your orator may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

That your honors grant a writ of summons in chancery, directed to the sheriff of said county of Cook, commanding him that he summont he defendant, Richard C. Crawford, to appear before said court on the first day of the next June term thereof, to be held at the court house, in the city of Chicago, in the county aforesaid, then
453 and there to answer this bill, etc.

(Signed) EDWARD A. VALENTINE.

FLOWER, SMITH & MUSGRAVE,
Compl't's Sol'c'rs.

STATE OF ILLINOIS, } ss:
County of Cook, }

On this twentieth day of May A. D. 1895, before me personally appeared the above named Edward A. Valentine, and made oath that he has heard read the above bill, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

(Signed) EDWARD A. VALENTINE.

Subscribed and sworn to before me this 20th day of May A. D. 1895.

(Signed) STELLA W. TENNEY,
[SEAL.] *Notary Public.*

[Endorsed:] 7941 14304 Circuit ct. of Cook county Edward A. Valentine *vs.* Richard C. Crawford. Bill of complaint Copy Horton to file Filed May 20th 1895 Frank J. Gaulter clerk. Flower, Smith & Musgrave attorneys.

454 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

EDWARD A. VALENTINE, Complainant, }
v.
RICHARD C. CRAWFORD, Defendant. }

On reading and filing the bill of complaint in the above entitled cause, duly verified, and on motion of Flower, Smith & Musgrave, solicitors for the said complainant;

It is by the court ordered that the Chicago Title and Trust Company be, and *he* is hereby, appointed as receiver of all of the partnership assets and effects of the firm of Crawford and Valentine, in this cause, upon giving bond as such receiver with satisfactory security in the sum of — thousand dollars, and the said receiver is hereby authorized and instructed to take immediate possession of the said partnership assets, together with the books of account, and to hold and convert the same under the order and direction of this court; and leave is hereby given to said receiver to apply to the court from time to time for such instructions in respect to said estate as he may deem advisable or necessary.

Entered May 20, 1895.

I consent to appointment of the receiver according to above order.

(Signed) EDW. O. BROWN, *For Def't.*

[Endorsed:] Circuit court of Cook county Edward A. Valentine *vs.* Richard C. Crawford. Order of complaint.

455 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

EDWARD A. VALENTINE, Complainant,
v.
RICHARD C. CRAWFORD, Defendant.

Whereas on the 20th day of May, 1895, an order was entered by said court appointing the Chicago Title & Trust Company, an Illinois corporation, receiver of all the partnership assets and effects of the firm of Crawford & Valentine, and said receiver was authorized and instructed to take immediate possession of said partnership assets, together with the books of account, and to hold and convert the same under the order and direction of said court;

Now therefore, know all men by these presents: That we, said Richard C. Crawford, and said Edward A. Valentine, copartners under the firm name of Crawford & Valentine, for and in consideration of the sum of one dollar to us in hand paid, and in pursuance of the said order of said court, have granted, bargained, sold, assigned and delivered, and by these presents do grant, bargain, sell, assign and deliver unto the said Chicago Title & Trust Company, receiver as aforesaid, all our partnership goods, chattels, property, assets, effects, bills and accounts receivable, choses in action, and debts due to us, copartners as aforesaid, including all stocks or bonds which we own or in which we have any interest, and memberships in the New York or Chicago stock exchange, belonging to us,
456 whether standing in the name of said copartnership or either member thereof

To have and to hold said goods, chattels, property, assets and effects unto the said Chicago Title & Trust Company, receiver, its successors and assigns, for the purpose aforesaid.

In witness whereof we have hereunto set our hands and seals the 20th day of May, 1895.

(Signed) EDWARD A. VALENTINE. [SEAL.]
RICHARD C. CRAWFORD. [SEAL.]

[Endorsed:] On circuit court of Cook county Edward A. Valentine *vs.* Richard C. Crawford Assignment of partnership assets to receiver.

457 Plaintiff here rested.

Thereupon the defendants to maintain the issues on their parts, introduced the following evidence, to-wit:

RICHARD C. CRAWFORD, one of the defendants called as a witness in his own behalf, being first duly sworn, was examined in chief by Mr. Brown and testified as follows:

Q. What is your name?
A. Richard C. Crawford.
Q. You were a member of the firm of Crawford & Valentine in 1895?
A. Yes sir.
Q. You have before you the ledger of Crawford & Valentine?
A. Yes sir.
Q. Are you familiar with the ledger?
A. Yes sir.
Q. Were you familiar with it, and of the account books of Crawford & Valentine up to the 20th of May 1895?
A. Yes sir.
Q. Will you turn to the account which is in that ledger under the name of James R. Watkins?
A. Yes sir.
Q. Did you know how that account stood upon the 20th of May 1895 when that book passed out of the possession of Crawford & Valentine into the hands of the receiver?
458 A. Yes sir.
Q. How did it stand?
A. Joseph R. Wilkins.
Q. When did you first know it had been changed to James R. Watkins or whatever it is now?
A. I think it was during the proceedings in bankruptcy.

Mr. MORAN: What is the object of this?
Mr. BROWN: To rebut the presumption of fraud that Mr. Burke tried to make concerning these books and these accounts. He put Mr Boyd specially on to testify that the account was changed before it came into his hands.
Mr. MORAN: I know, but you can't put in any defense on that question.
Mr. BROWN: That may be, but I can contradict that evidence.
Mr. MORAN: I don't think so. Do you offer it for the purpose of rebutting fraudulent intent? If so it is not competent.
The COURT: I don't see that that account has much to do with this case, only wasting a good deal of time.

Mr. BROWN:

Q. Mr. Crawford do you know the plaintiff, Mr. Burke?
A. Yes sir.
Q. How long did he deal with the firm of Crawford & Valentine?
A. He dealt with us from the time we started in business on July 1st, more or less all the time until we failed.
459 Q. From July 1st 1894 to the time of the failure in 1895?
A. Yes, sir.

Q. Do you recollect the conversation with Mr. Burke in the latter part of October, at your place of business, in 1894?

A. Well, I have had a great many conversations with Mr. Burke.

Q. Well, this was in the latter part of October, or the first of November, I am calling your attention to?

A. I talked to Mr. Burke while he was in our office almost every day while we were in business.

Q. Do you remember the conversation concerning the Metropolitan Traction stock and your relation to it?

A. Yes sir.

Q. Shortly after your return from Philadelphia?

A. Yes sir.

Q. When was that?

A. That was in the fall of 1894, October or November.

Q. What was it?

Mr. MORAN: I object.

The COURT: Upon what theory are you calling for this conversation?

Mr. BROWN: We offer to prove by Mr. Crawford that he told Mr. Burke at that time that he had sold Metropolitan Traction short at Philadelphia. This shows Mr. Burke must have known,
460 from the natural and inevitable course of the business that Crawford & Valentine were interested to that extent—that he was short—this number of shares of the Metropolitan Traction stock.

The COURT: Under what plea is that offered?

Mr. BROWN: Our position in relation to this matter is this: This bankruptcy discharge we contend is perfectly good against anything that is alleged and can be proved under that declaration; but these gentlemen have assumed the burden of proving a case under the declaration. Now if your honor should hold that the bankruptcy discharge was good as against a certain case and not as against another, your honor must consider what sort of a case they have made. This evidence would then be competent and relevant as to whether upon the very question as to whether the bankruptcy discharge was good. If your honor should hold for instance—contrary to our contention—that a debt made by fraud not in a fiduciary capacity, but a fraudulent contract, was not barred even if it had not been reduced to judgment, then any evidence which we put in in reply to that which goes to show that the debt was not fraudulently contracted would be competent under this bankruptcy issue.

The COURT: As I understand the pleadings in this case now, you have only two things to do: Move at the close of their case, and it is a motion in reference to the evidence, or introduce a certified copy of the discharge in evidence.

461 Mr. BROWN: Your honor holds we cannot introduce evidence? If we offer to show that this debt was not fraudulent contracted, does your honor hold that we can't prove it?

The COURT: Yes.

Mr. BROWN: All we want is to save our point. I don't care to wrangle about it. We will withdraw Mr. Crawford.

The COURT: Very well.

To which ruling of the court the defendants by their counsel then and there duly excepted.

The COURT: That is my view, but I have got serious doubts, Judge Moran, as to whether or not you have proved any damages here.

Mr. PENCE: There is no question about that. The rule in this State is as to the measure of damages, the value of the stock at the time of this conversion.

The COURT: And not at the time of the demand.

Mr. BURKE: Then it is shown your honor what would be due the plaintiff in this case on the 20th of May 1895 if he had been credited with the market value of the stock.

The COURT: I understand.

Mr. PENCE: That is the rule in this State.

The COURT: It is not my view of the law.

Mr. PENCE: It is the rule of this State in regard to stocks.

Mr. BROWN: I would like to be sure and get this offer right:

462 We have asked a question of Mr. Crawford which has been objected to. Counsel for defendants states he offers this for the purpose of showing the debt was not fraudulently contracted, and the court sustains the objection upon the ground that we cannot introduce the evidence under the pleadings as they exist, to which the defendants except.

The COURT: Yes.

To which ruling of the court the defendants by their counsel then and there duly excepted.

Mr. VROOMAN: We offer petition in discharge of bankruptcy, the certificate of the discharge in bankruptcy of the defendants herein, and both of them, in the United States district court, northern district of Illinois, north division, dated April 5th 1900, and the certificate being dated April 10th 1900, marked "Defendants' Exhibit 1."

Which said papers so introduced are in the words and figures following, to-wit:

463 In the District Court of the United States of America for the Northern District of Illinois, Northern Division.

Present: The Honorable Christian C. Kohlsaat, judge.

Whereas, Richard C. Crawford and E. Archibald Valentine, individually and as co-partners under the firm name and style of Crawford and Valentine of Chicago, in said district, have been duly adjudged bankrupts under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Richard C. Crawford and E. Archibald Valentine, individually and as co-part-

ners under the firm name and style of Crawford and Valentine, be discharged from all debts and claims which are made provable by said acts against their individual and copartnership estates, and which existed on the 29th day of April, A. D. 1899, on which day the petition for adjudication was filed by them; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

I, T. C. MacMillan, clerk of the district court, of the United States of America for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order of discharge entered of record in said court on the 5th day of April, A. D. 1900, in the above entitled cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 10th day of April, A. D. 1900.

[SEAL.] T. C. MACMILLAN, *Clerk.*

464 Mr. BROWN: We propose to prove by Mr. Valentine and Mr. Crawford that they both considered the accounts which have been put in as worthless—that they regarded them as valuable assets of their firm.

The COURT: Regarded them as valuable?

Mr. BROWN: Regarded them as valuable up to very near the time of the failure.

Mr. MORAN: We object.

The COURT: Objection sustained.

To which ruling of the court defendants by their counsel then and there duly excepted.

JOHN E. BURKE, recalled on behalf of the defendants was examined by Mr. Brown and testified as follows:

Q. Mr. Burke, did you know of the fact that the defendants were in bankruptcy when the bankruptcy proceedings were pending in the northern district of Illinois, northern division, the United States district court?

A. Yes sir, I knew it.

Q. You were scheduled as a creditor in those proceedings were you?

A. The schedule——

Q. You were scheduled?

465 A. My name is in the schedule for certain amount.

Q. As a creditor?

A. As a creditor.

Q. You had notice of those proceedings did you in the due course of the bankruptcy matter?

A. Oh yes, I knew it.

Q. And you were present at the meetings of the creditors?

A. I was present at one meeting of the creditors.

Q. You were also present at the time the defendants in this case

applied for their discharge in bankruptcy in the United States court, were you?

A. I was.

Q. During the proceedings pending the discharge?

A. I knew of the proceedings.

Q. You were there?

A. I don't know I was there when they made their application for discharge, but I knew——

Q. You objected to their discharge?

A. Not for myself.

Q. For somebody else?

A. As attorney for another creditor I objected.

Q. And you were present many times in court introducing evidence and examining witnesses?

A. I was before the referee several times in contesting their discharge for one of the creditors, as attorney for one of the creditors.

Q. And you had ample time to prove your claim in bankruptcy had you see- fit to do so?

A. I had time to prove my claim if I thought it possible; I didn't so regard it.

Q. I didn't ask you that. I asked you if you had the time
466 and opportunity to prove your debt?

Mr. MORAN: Oh yes he had plenty of time.

A. Oh yes, plenty of time.

Cross examination.

By Mr. PEECH:

Q. You didn't prove your claim?

A. No sir.

Q. Or attempt to prove it?

A. No sir.

And thereupon the court adjourned to meet at 2 o'clock p. m.

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BURKE
vs.
CRAWFORD ET AL.

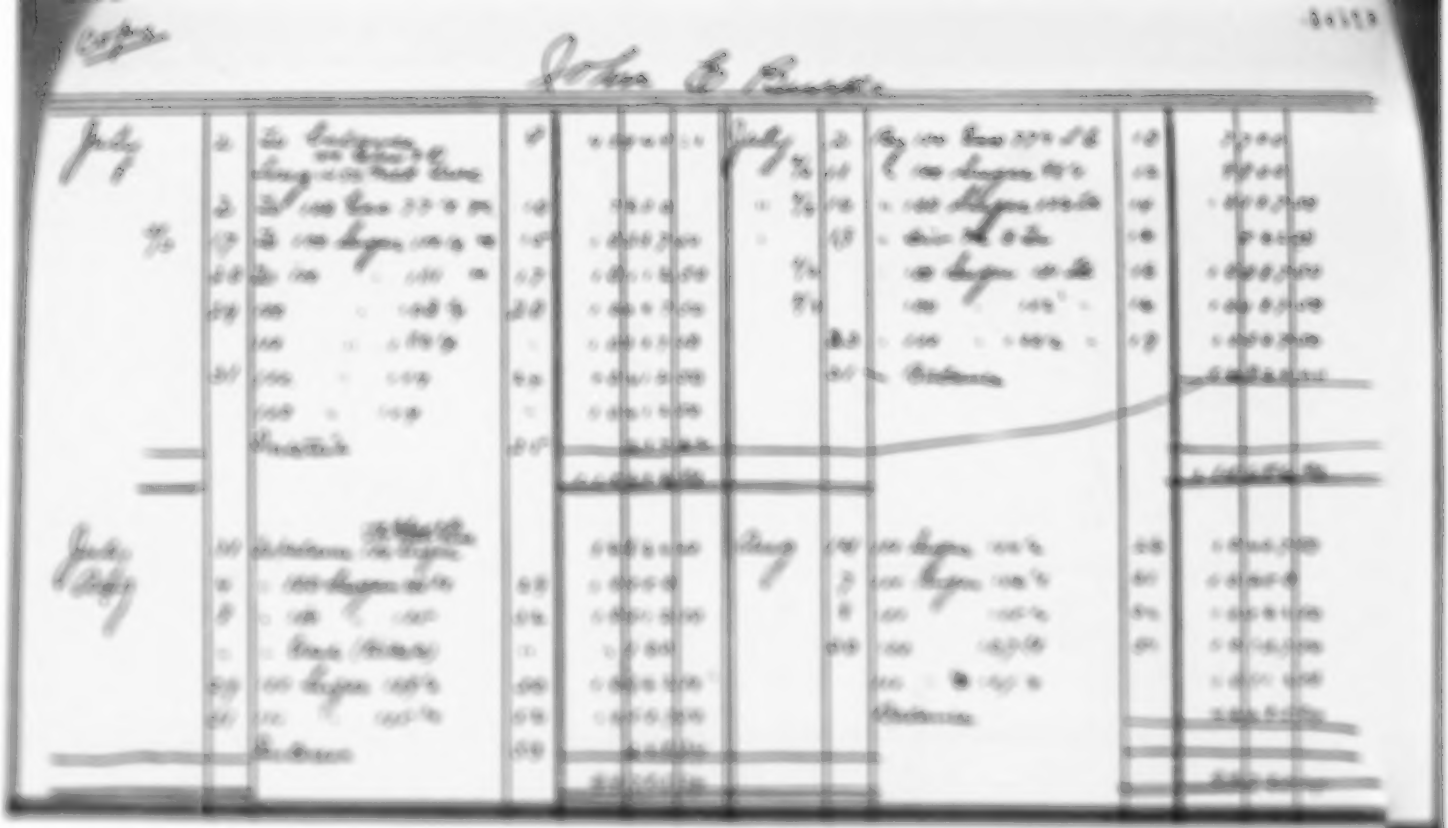
TUESDAY, 10 A. M., January 9, 1883.

Court met pursuant to adjournment.

Mr. BURKE: May it please the court, I desire in my own behalf to withdraw the objections that were made yesterday to Mr Crawford's testimony. I desire to withdraw the objections.

Mr. BROWN: It is too late.

The COURT: The case is closed.



Copy

John E Burke

July	2	To balance 100 Ohio & 100 Long 450 Met Trac	9	4 5 7 4 4	20	July	2	By 100 Gas 77½	26	10	7 7 0 0
							3/3	" 100 Sugar 98½	11	12	9 8 0 0
	2	To 100 Gas 77½	10	7 8 0 0			3/3	" 100 Sugar 102 Ex	16	14	10 2 8 7 50
3/3	17	To 100 Sugar 100¼	15	10 3 3 7 50				" Dir 2 & Ex	18	16	5 6 2 50
	20	To 100 " 101	17	10 4 1 2 50			3/3	" 100 Sugar 101 Ex	18	16	10 4 8 7 50
	24	100 " 103¾	20	10 6 8 7 50			5/3	" 100 " 102	18	16	10 4 8 7 50
		100 " 103¼		10 6 3 7 50				23 " 100 " 103½	19	19	10 8 3 7 50
	31	100 " 107	24	11 0 4 1 2 50				31 Balance			56 8 2 4 40
		100 " 107		11 0 4 1 2 50							
		Interest	25	2 3 7 6 2							
				115 6 8 6 90							115 6 8 6 90
July	31	To balance 100 Sugar 100 Ohio & 350 Met Trac		56 8 2 4 40		Aug	1st	100 Sugar 104½	26		10 4 3 7 50
Aug	4	" 100 Sugar 105 38	29	10 5 5 0			7	100 Sugar 106 38	31		10 6 5 0
	8	" 100 " 105	32	10 5 1 2 50			8	100 " 105	32		10 5 6 2 50
	"	" Cash (ticket)	"	100			30	100 " 107 38	51		10 7 3 7 50
	29	100 Sugar 109½	50	10 9 6 2 50				100 " " 101			10 7 1 2 50
	31	100 " 105 34	52	10 5 8 7 50				Balance			46 8 5 24
		Interest	53	2 4 8 34							
				99 7 8 5 24							99 7 8 5 24
Aug	31	Balance 100 C & Ohio 450 Met Trac		46 6 5 3 24		Sept	6	100 Sugar 105 38	57		10 5 5 0
Sept	6	100 Sugar 105¼	57	10 5 3 7 50			6	100 " 104	57		10 3 5 7 50
	"	100 " 103 38		10 3 5 0			15	200 Reading 21 ⅛	65		20 8 7 50
	17	200½ Reading 19	66	19 1 2 50			17	200 " 19 38			19 2 5 -
	18	200½ " 19		20 0 0							22 6 0 9 14
	28	50 Met Trac 16½	76	5 3 1 25							
Oct	1	Interest - Sept a/c	79	2 4 2 70							
				77 5 5 9 14							77 5 5 9 14
Sept	29	Balance		52 6 0 9 14		Oct	2	Dir 500 Met Trac	81		6 25
Oct	5	100 Sugar 84 34	87	8 4 8 7 50			4	100 Sugar 85	84		8 5 1 2 50
	31	Interest - Oct a/c	107	2 6 8 69			31	Balance			52 2 2 7 88
				61 3 6 5 33							61 3 6 5 33
Oct	31	Balance 500 Met Trac 100 C & Ohio		52 2 2 7 88		Nov	16	100 Sugar 85 78	122		8 5 0 0
Nov	15	100 Sugar 87½	121	8 7 6 2 50			24	100 Sugar 87 78	124		8 7 7 5 -
	23	100 " 87½	125	8 7 6 2 50				Balance			70 2 4 4 1 83
	30	Interest -	133	2 6 3 84 -							
				70 0 1 6 83							70 0 1 6 83
Nov	30	Balance 500 Met Trac 100 C & Ohio	555	70 2 4 4 1 83		Nov	30	Bal fwd to folio 585			70 2 4 4 1 83

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5-83-

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John E Burke from folio 526

Nov	30	Balance Long 500 Met Trac. 100 B+Ohio		52	44	83	Dec	20	Cy	451	2	000	
Dec	31	Dec Int	161		267	28			Balance fwd		50	709	11
				52	709	11					52	709	11
Dec	31	Balance fwd		50	709	11	Jan	11	Check		2	000	
		100 Erie + Ohio on hand	240					17	Div 1/2 500 Met Trac			625	
		500 Met-Trac "						25	Check		2	000	
Jan	29	300 " " Jan + Co		24	000			28	300 Met-Trac	908	27	000	
	31	Int			205	06		29	Check		1	900	
								31	Balance		43	289	17
				74	914	17					74	914	17
Jan	31	Balance fwd		42	289	17	Feby	28	Balance		42	453	62
		500 Met Trac on hand											
Feby	28	Interest			164	45							
				42	453	62					42	453	62
Feby	28	Balance		42	453	62	Mar	5	1/2 Pfd 10 May Whit-			6	25
		500 Met-Trac on hand						30	Balance fwd		47	288	00
Mar	28	50 " " " "	93	4	656	25							
		Int for Mch			184	68							
				47	294	93					47	294	93
Apl	1	Balance fwd		47	288	00	Apl	1	100 O+O	179	1	762	50
		550 Met on hand							Check Wm Kent		3	900	
		100 O+O							" Jamieson + Co			500	
	30	Interest			207	98		16	Div 550 Met-Trac			687	50
								30	Balance fwd		41	246	28
				47	496	28					47	496	28
Apl	30	Balance fwd		41	246	28	May	21	550 Met-Trac	95	52	181	25
		550 Met-Trac on hand											
May	13	Ck Wm Kent		3	023	69							
	21	Interest to date			148	78							
		Balance fwd		7	462	54							
				52	181	25					52	181	25
							May	21	Balance		7	462	54

Copy.

Dick Bros & Co

Philadelphia Pa

July	18	Dividend Met-Tr	10		562	50	July	21	By Balance	9	48	290	47
	31	Balance			47727	97		"	Long 450 Met-Tr				
					48290	47				10	48	290	47
Aug	31	To balance			49659	33							
							July	31	By balance		47	724	97
							Aug	6	" Interest July	90		165	40
								25	" 5 Met-Trac	118 47		590	31
								31	" 110 " "	117½ 52		1179	63
					49659	33					49	659	33
Sep	1	15 Met-Trac Adjt					Aug	31	Balance 15 Met-Trac		47	659	32
	6	Draft	57				Sep	7	Interest-August 30	58		144	58
	10	10 Met-Trac Adjt	60					10	10 Met-Trac	118 60		1180	62
	14	Draft	64		1000			28	50 " "	116½ 76		5824	13
		Balance			54812	64					56	812	04
					56812	64							
Oct	2	Dividend 500 Met-Trac	81		625		Sep	29	Balance 500 Met-Trac		54	812	64
	12	200 Peoples Trac	91		10987	50	Oct	20	50 Peoples	58½ 98		2678	12
	16	200 " "	94		10887	50		29	100 Met-Trac	109 105		10206	25
		DB&L			4000								
	24	100 Met-Trac 109¼	101		10918	75							
		Balance			31028	26							
					68397	01					68	397	01
Oct	29	Bal Chgt 350 Peoples Trac					Oct	29	Balance 500 Met-Trac		31	028	26
Dec	20	D B & L	151		3000		Dec	17	200 Peoples	54 148	10	812	50
	31	Balance			48917	57		18	50 "	54 149	2	703	12
								19	100 "	52¾ 150	5	281	25
								26	D B & L	155	1	500	
									Just Dept ap	"		142	66
									" Oct ap	"		152	94
									" Mar "	"		147	21
								31	" Dec "			144	70
					51917	57					51	917	57
Jany	10	200 Met-Trac 100¾			20137	50							
	11	200 " " 101½			20287	50	Dec	31	Balance 500 Met-Trac		48	917	57
	16	Div 1¼ 500 Met-Trac			625		Jan	12	Cash D B & L		1	200	
	26	50 Met-Trac	944		4709	87	"	25	150 Met-Trac	98	14	709	87
		50 " " 218 Rec			4700				152 " "	97	14	859	58
		Draft			4000				50 " "	96	4	803	10
	28	300 Met-Trac	904		27018	75			Cash for dup RCC			127	50
	31	Balance Just			3838	57		28	Rec # 1038		1	500	
					85816	66					85	816	66
Feby	4	50 Met-Trac	100		4476	58		31	Bal Just			338	07
	28	Balance 6 pages 412			4891	95		4	50 Met-Trac	74	4	753	12
								9	Just Jan			977	
					9368	53					9	368	53

412

Copy

Dick Bros & Co
Philadelphia Pa

Mar	12	Error in Jan Int				20		Febry	28	Balance fwd from	411		4	391	95
"	13	50 Met Traction	96¾		4	834	38	Mar	13	Int February				11	43
	30	Draft-				500			28	50 Mc Trac	93		4	058	12
		Balance			8	330	25			50 " "	92½		4	628	13
					13	684	63						13	017	63
Apl	3	Draft-				1000		Mar	30	Balance fwd			8	930	25
	16	100 Met-Trac-	89½		8	943	75	Apl	4	Interest-Mch				7	84
										Draft-			1	500	
									30	Balance fwd				230	66
					10	068	75						10	068	75
Apl	30	Balance fwd				230	66	May	2	Int April				13	46
									21	Balance fwd			21	720	
						230	66						230	66	
May	21	Balance			21	720									

Toland Bros. & Co. account, page 416 of the ledger, page 461 of the record.

This account is also here printed in full as follows:

416

Copy

Toland Bros. Coal Co.

Philadelphia Pa

Sept	24	2 Penna Ry 9738	72		103	13	Oct	5	Check 101 13 Jan 20	85		103	13
Jan	16	120 West Che Recd			- - -	- -	Jan	16	120 W C	716	1	8	90 5
Jan	17	Draft-		1	8	90 5		17	25- Phil Traction	924	2	30	4 68
	18	25- Phil Traction	905	2	25	7 81		26	50 West Traction	926		47	0 0
	23	Check			46	87		29	50 " "	924		46	0 9 28
	26	50 Met- Trac	944		47	0 9 38		29	Check.				9 38
	31	Balance fwd		3	8	2 4 0 63		29	300 Met-Trac Hagerstown	926	2	4	0 0 0
								31	100 " "	961		9	6 3 1 25
				5	9	1 5 9 64					5	9	1 5 9 64
Feb	4	100 Met-Trac 1004		1	0	0 1 8 75	Jan	31	Balance fwd		3	8	2 4 0 63
	28	Balance		3	0	7 2 1 88	Feb	2	Draft-			2	5 0 0
				4	0	7 4 0 63					4	0	7 4 0 63
Mar	13	353 Met- Trac 984		3	3	8 4 0 62	Feby	28	Balance fwd		3	0	7 2 1 88
	27	Check			3	2 86	Mar	4	Int for Feby				10 10
	30	Balance fwd				01		15	Draft			3	0 0 0
								18	Int Mar 15				4 53
				3	3	8 7 3 51					3	3	8 7 3 51
Apl	4	Bal & Int a/c				01	Mar	30	Balance				01

Mr. BROWN: Crawford is not here.

Mr. BURKE: Yes, he is.

Mr. BROWN: I didn't understand what the court said.

The COURT: Mr. Burke says that he personally desires to withdraw his objections to the testimony of Mr. Crawford. I don't know whether his counsel agree with him or not.

Mr. PENCE: Oh, he is counsel in the case.

The COURT: Well, what have you got to say, gentlemen? The case is closed unless you make application to put Mr. Crawford on the stand again.

Mr. BROWN: I do not think I have anything to say.

The COURT: Well, the case is closed. They are silent. Proceed, Mr. Pence.

468 Mr. BURKE: I further now, in my own behalf, further withdraw the objections to the testimony which they proposed to offer and would like to have their response to that.

The COURT: It appears they haven't anything to say. Proceed, Mr. Pence.

Mr. Pence then proceeded with his argument on behalf of the plaintiff.

10 A. M., JANUARY 10, 1901.

It was agreed by and between counsel that the Financial Chronicle should be considered in evidence as to the market prices of Metropolitan Traction stock at such dates as the court should desire to inspect the same.

The page of accounts in ledger and cash book of Crawford & Vallentine hereinbefore mentioned as offered in evidence here follows:

(Here follow fac-similes marked pp. 469, 470, 546, 547, and 548.)

568 Which was all the evidence introduced or offered in the party to said cause in behalf of the plaintiff or on behalf of the defendants.

Whereupon the plaintiff asked the court as follows, to hold certain propositions of law in said cause.

STATE OF ILLINOIS, } ss.
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BUSEE
vs.
RICHARD C. CRAWFORD and EDWARD A. VAUGHAN. } Gen. No. 17038. Term No. 756.

The plaintiff, by his attorneys, submits the following propositions, and asks that the same may be held as law in the decision of the above entitled cause.

A. M. PENCE,
T. A. MORAN,
Attorneys for Plaintiff.

1. If the evidence shows that the defendants were acting as brokers and agents of the plaintiff, and that on or about the 24th day of October, 1894, the defendants, as such brokers and agents were carrying for him, and had in their possession, or under their control, for the plaintiff, and belonging to him, five hundred shares of Metropolitan Traction stock, in controversy in this case; and that on or about the 24th day of October, 1894, the defendants, without the knowledge or consent of the plaintiff, sold, or caused to be sold, one hundred shares of said stock, and converted, or appropriated to their own use, the said one hundred shares, or the proceeds of the sale thereof, or the plaintiff's pecuniary interest in said one hundred shares, or his interest in said proceeds, and that such sale, conversion, or appropriation was made with the intent to commit upon the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendant's conduct was such that under Gentsinger vs. Smith, supra, is not a legal defense to the plaintiff's claim for such damages, if any, as he may be entitled to by reason of such sale, conversion or appropriation. *Held.*

2. If the evidence shows that the defendants were acting as brokers and agents of the plaintiff, and that on or about the 26th day of January, 1895, the defendants, as such brokers and agents were carrying for him, and had in their possession, or under their control, for the plaintiff, and belonging to him, four hundred shares of Metropolitan Traction stock, in controversy in this case; and that on or about the said 26th day of January, 1895, the said

sale, without the knowledge or consent of the plaintiff sold or caused to be sold, one hundred shares of said stock converted or appropriated to their own use the said one hundred shares or the proceeds of the sale thereof, or the plaintiff's interest thereon and one hundred shares, or the interest in said proceeds, and that such sale, conversion or appropriation was made with the intent to commit upon the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendants' conduct was such that their discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, he may have sustained by reason of such sale, conversion or appropriation. *Held*,

3. If the evidence shows that the defendants were acting as the brokers and agents of the plaintiff, and that on or about the [illegible] day of January, 1905, the defendants, as such brokers and agents, were carrying for him, and had in their possession or under their control, for the plaintiff and belonging to him, three hundred
(1) shares of Metropolitan Traction stock, in controversy in this case; and that on or about the said [illegible] day of January, 1905, the defendants, without the knowledge or consent of the plaintiff, sold, or caused to be sold, two hundred shares of said stock, and converted, or appropriated to their own use, the said two hundred shares or the proceeds of the sale thereof, or the plaintiff's interest in said two hundred shares, or his interest in said proceeds, and that such sale, conversion, or appropriation was made with the intent to commit upon the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendants' conduct was such that their discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, he may have sustained by reason of such sale, conversion or appropriation. *Held*,

4. If the evidence shows that the defendants were acting as the brokers and agents of the plaintiff, and that on the [illegible] day of January, 1905, the plaintiff or the special [illegible] and [illegible] of the defendants, placed, or caused to be placed, in their hands, or under their control, three hundred shares of the capital stock of the Metropolitan Traction Company, to be held and carried for him by defendants as his brokers, agents and pledgees, and that at the time said three hundred shares of stock were placed in the hands or under the control of the defendants as aforesaid, the defendants advanced, or caused to be advanced, to or for the plaintiff the sum of twenty-four thousand dollars as a loan on said shares of stock, and that on or about the [illegible] day of March, 1905, the defendants, without the knowledge or consent of the plaintiff and or caused to be sold the said three hundred shares of said stock and converted or appropriated to their own use, the said shares of stock or the proceeds of the sale thereof, or the plaintiff's investment thereon or said shares, or his interest in said proceeds, and that such sale, conversion or appropriation was made with the intent to commit upon
(2) the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendants' conduct was such that their discharge in bankruptcy is not a legal defense to

the plaintiff's claim for such damages, if any, as he may have sustained by reason of such sale, conversion or appropriation. *Held.*

5. If the evidence shows that the defendants were acting as the brokers and agents of the plaintiff, and that on or about the 16th day of April, 1895, the defendants, as such brokers and agents, were carrying for him, and had in their possession, or under their control, for the plaintiff, and belonging to him, fifty shares of Metropolitan Traction stock, in controversy in this cause; and that on or about the said 16th day of April, 1895, the defendants, without the knowledge or consent of the plaintiff, sold, or caused to be sold, the said fifty shares of stock, and converted, or appropriated to their own use, the said fifty shares, or the proceeds of the sale thereof, or the plaintiff's reversionary interest in said fifty shares, or his interest in said proceeds and that such sale, conversion or appropriation was made with the intent to commit upon the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendants' conduct was such that their discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of such sale, conversion or appropriation. *Held.*

6. If the evidence shows that on or about the 20th day of December, 1894, the defendants falsely and fraudulently represented to the plaintiff that, as his brokers and agents, they then had on hand, or were then carrying five hundred shares of Metropolitan Traction stock belonging to him, and that it was then necessary for the plaintiff to pay to or deposit with them the sum of two thousand dollars, as further margins or security on said five hundred shares of stock; and that the defendants then required the plaintiff to pay to or deposit with them the sum of two thousand dollars as fur-
572 ther margins or security on said five hundred shares of stock, as aforesaid; and if the evidence further shows that the plaintiff relied upon said representations, and believed them to be true, and was thereby induced to pay, and did pay to and deposit with the defendants, at the time above mentioned, the sum of two thousand dollars, as further margins and security on said five hundred shares of Metropolitan Traction stock; and if the evidence further shows that the aforesaid representations, if such representations were made, were false, and were known by the defendants to be false when they made them, if they did make them; and that, instead of five hundred shares, the defendants then held or carried or had on hand for the plaintiff, and belonging to him, only four hundred shares of Metropolitan Traction stock, and that said representations, if made, were made with intent to defraud the plaintiff, and to obtain from him the said sum of two thousand dollars, then the court holds that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of said representations, if such representations were made. *Held.*

7. If the evidence shows that on or about the 11th day of January, 1895, the defendants falsely and fraudulently represented to the

plaintiff that, as his brokers and agents, they then had on hand, or were then carrying, five hundred shares of Metropolitan Traction stock belonging to him, and that it was then necessary for the plaintiff to pay to or deposit with them the sum of two thousand dollars, as further margins or security on said five hundred shares of stock; and that the defendants then required the plaintiff to pay to or deposit with them the sum of two thousand dollars as further margins or security on said five hundred shares of stock, as aforesaid; and if the evidence further shows that the plaintiff relied upon said representations, and believed them to be true, and was thereby induced to pay, and did pay, to and deposit with the defendants, at the time above mentioned, the
573 sum of two thousand dollars, as further margins and security on said five hundred shares of Metropolitan Traction stock; and if the evidence further shows that the aforesaid representations, if such representations were made, were false, and were known by the defendants to be false when they made them, if they did make them, and that, instead of five hundred shares, the defendants then held or carried, or had on hand for the plaintiff, and belonging to him, only three hundred shares of Metropolitan Traction stock; and that said representations, if made, were made with intent to defraud the plaintiff, and to obtain from him the said sum of two thousand dollars, then the court holds that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of said representations, if such representations were made. *Held.*

8. If the evidence shows that on or about the 25th day of January, 1895, the defendants falsely and fraudulently represented to the plaintiff that, as his brokers and agents, they then had on hand, or were then carrying, five hundred shares of Metropolitan Traction stock belonging to him, and that it was then necessary for the plaintiff to pay to or deposit with them the sum of two thousand dollars, as further margins or security on said five hundred shares of stock; and that the defendants then required the plaintiff to pay to or deposit with them the sum of two thousand dollars as further margins or security on said five hundred shares of stock, as aforesaid; and if the evidence further shows that the plaintiff relied upon said representations, and believed them to be true, and was thereby induced to pay, and did pay to and deposit with the defendants, at the time above mentioned, the sum of two thousand dollars, as further margins and security on said five hundred shares of Metropolitan Traction stock; and if the evidence further shows that the aforesaid representations, if such representations
574 were made, were false, and were known by the defendants to be false when they made them, if they did make them, and that, instead of five hundred shares, the defendants then held or carried, or had on hand for the plaintiff, and belonging to him, only one hundred shares of Metropolitan Traction stock; and that said representations, if made, were made with intent to defraud the plaintiff, and to obtain from him the said sum of two thousand dol-

lars, then the court holds that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of said representations, if such representations were made. *Held.*

9. If the evidence shows that on or about the 29th day of January, 1895, the defendants falsely and fraudulently represented to the plaintiff that, as his brokers and agents, they then had on hand, or were then carrying, two hundred shares of Metropolitan Traction stock belonging to him, and that it was then necessary for the plaintiff to pay to or deposit with them the sum of one thousand dollars, as further margins or security on said two hundred shares of stock; and that the defendants then required the plaintiff to pay to or deposit with them the sum of one thousand dollars as further margins or security on said two hundred shares of stock as aforesaid; and if the evidence further shows that the plaintiff relied upon said representations, and believed them to be true, and was thereby induced to pay, and did pay, to and deposit with the defendants, at the time above mentioned, the sum of one thousand dollars, as further margins and security on said two hundred shares of Metropolitan Traction stock; and if the evidence further shows that the aforesaid representations, if such representations were made, were false, and were known by the defendants to be false when they made them, if they did make them, and that, at the time said representations were made by the defendants, if said representations
575 were made by them, they did not then hold, carry or have on hand for the plaintiff and belonging to him, any shares of Metropolitan Traction stock whatever; and that said representations, if made, were made with intent to defraud the plaintiff, and to obtain from him the said sum of one thousand dollars, then the court holds that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of said representations, if such representations were made. *Held.*

10. If the evidence shows that on or about the 1st day of April, 1895, the defendants falsely and fraudulently represented to the plaintiff that, as his brokers and agents, they then had on hand, or were then carrying, five hundred and fifty shares of Metropolitan Traction stock belonging to him, and that it was then necessary for the plaintiff to pay to or deposit with them the sum of three thousand eight hundred dollars, as further margins or security on said five hundred and fifty shares of stock; and that the defendants then required the plaintiff to pay to or deposit with them the sum of two thousand eight hundred dollars as further margins or security on said five hundred and fifty shares of stock, as aforesaid; and if the evidence further shows that the plaintiff relied upon the said representations, and believed them to be true, and was thereby induced to pay, and did pay, to and deposit with the defendants, at the time above mentioned, the sum of three thousand eight hundred dollars as further margins and security on said five hundred and fifty shares of Metropolitan Traction stock; and if the evidence

further shows that the aforesaid representations, if such representations were made, were false, and were known by the defendants to be false when they made them, if they did make them, and that, at the time said representations were made by the defendants, if said representations were made by them, they then held, carried, or had on hand for the plaintiff and belonging to him, only fifty
576 shares of Metropolitan Traction stock; and that said representations, if made, were made with intent to defraud the plaintiff, and to obtain from him the said sum of three thousand eight hundred dollars, then the court holds that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of said representations, if such representations were made. *Held.*

11. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the first count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said first count. *Held.*

12. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the second count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said second count. *Held.*

13. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the third count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defence to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said third count. *Held.*

14. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the fourth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defence to
577 the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said fourth count. *Held.*

15. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the fifth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said fifth count. *Held.*

16. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the sixth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said sixth count. *Held.*

17. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the seventh count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said seventh count. *Held.*

18. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the eighth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said eighth count. *Held.*

19. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the ninth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense
578 to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said ninth count. *Held.*

20. The court holds, as a matter of law, that all the material allegations of matter of fact contained in the tenth count of the plaintiff's declaration stand as admitted on the pleadings, and that the defendants' discharge in bankruptcy is not a legal defense to the plaintiff's claim for such damages, if any, as he may have sustained by reason of the matters alleged in said tenth count. *Held.*

All of which twenty propositions of law thus submitted by the plaintiff were "held," and marked "held" by the court, to which holding of each and every one of said propositions, and of all of the same, the defendants then and there duly excepted, and entered their exceptions herein.

And the defendants asked the court as follows, to hold certain propositions of law in said cause.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN E. BURKE
vs.
RICHARD CRAWFORD and EDWARD A. VALENTINE.

And the said defendants request the court to hold the following propositions of law:

1. The court holds, as matter of law, that the discharge in bankruptcy of the defendants is a bar to the plaintiff's cause of action as set out in the first five counts of his declaration. *Refused.*

579 2. The court holds, as matter of law, that under the evidence in this case, the discharge in bankruptcy of the defend-

ants is a bar to the plaintiff's demands asserted in the first five counts of his declaration. *Refused.*

3. The court holds, as matter of law, that the discharge in bankruptcy of the defendants is a bar to plaintiff's cause of action as set out in the sixth, seventh, eighth, ninth and tenth counts of his declaration. *Refused.*

4. The court holds, as matter of law, that under the evidence in the case, the discharge in bankruptcy of the defendants is a bar to the plaintiff's demands asserted in the sixth, seventh, eighth, ninth and tenth counts of his declaration. *Refused.*

5. The court holds, as matter of law, that the discharge in bankruptcy of the defendants is a bar to all of the plaintiff's demands as set out in his declaration. *Refused.*

6. The court holds, as matter of law, that under the evidence in the case, the discharge in bankruptcy of the defendants is a bar to all the demands asserted by the plaintiff in his declaration. *Refused.*

7. The court holds that, under the evidence in this case, the plaintiff never acquired the lawful title to any of the stock in question, and the plaintiff is not entitled to sustain the first five (5) counts of his declaration, or either thereof, and the plaintiff can not, under the evidence, maintain an action of trover for said stock. *Refused.*

8. That if the court finds from the evidence that the plaintiff employed the defendants to purchase from, or place orders with stock-brokers in Philadelphia, for Metropolitan Traction Company's stock, on the understanding that the defendants were only to advance margins to said Philadelphia brokers, then the title to such stock did not vest in the plaintiff until demand for with offer to
580 pay therefor and refusal of defendants to deliver so as to enable him to maintain *trover* therefor. *Refused.*

All of which eight propositions of law the court refused to "hold," and marked "refused," to which refusal of the court to hold said propositions of law, and the refusal to hold each of them, the defendants then and there excepted, and duly entered their exceptions herein.

And the defendants further asked the court to hold the following propositions of law:

9. That if the court finds from the evidence that the plaintiff employed the defendants to employ brokers in Philadelphia to make purchases of stock in their own name, but on the understanding that the plaintiff was to be given the benefit of such purchases or contracts, and that the defendants did not entirely pay for such stock, but only advanced a percentage of the price thereof to the Philadelphia brokers who carried the said stock or protected the contracts therefor as between themselves and the defendants, and that as between the plaintiff and defendants it was understood that the plaintiff should be given the benefit of all profits that might be made by virtue of such purchases or contracts, and that plaintiff should sustain all losses by reason thereof, and should pay the de-

fendants a commission or brokerage for their services, and that all the facts and circumstances connected with such transactions were fully known to the plaintiff, then, as a matter of law, the title to none of said stock could or did vest in the plaintiff until he demanded and offered to pay the balance due on same and was refused delivery by defendants, in such manner as to enable him to sustain an action of tort or trover for the conversion thereof, if the same was converted. *Held.*

Said proposition (No. 9) was held and was marked "held" by the court, to which holding and ruling by the court the plaintiff then and there duly excepted and entered his exception herein.

10. That if the court finds from the evidence that the
581 plaintiff employed the defendants to order or purchase stock of, or from, stockbrokers in Philadelphia, upon the advance of a margin by the defendants to said brokers; and if the court finds from the evidence that the defendants sold "short" stock of like kind for their own account with the same Philadelphia brokers, and advised the plaintiff thereof; and if the court further finds from the evidence that the plaintiff did not object thereto, but, on the contrary, acquiesced therein, then, as a matter of law, the plaintiff cannot in this action complain of like conduct on the part of the defendants subsequently thereto. *Held.*

Which said two propositions of law marked "nine" and "ten" the court held and marked "held," to which holding and ruling by the court as to each of said propositions the plaintiff then and there duly excepted, and entered his exceptions herein.

And the defendants further asked the court to hold the following propositions of law, marked "eleven," "twelve" and "thirteen."

11. The court holds, as matter of law, that the burden of proof in this case is upon the plaintiff, and that before he can recover under the 6th, 7th, 8th and 10th counts of his declaration, or either of them, he must prove by a preponderance of the evidence that he advanced the moneys therein severally alleged to have been advanced upon the representations therein severally charged to have been made by the defendants, and that such representations were then false. *Refused; admitted by pleadings.*

12. The court finds, as matter of law, that upon the evidence in this case the plaintiff is not entitled to recover in this form of action. *Refused.*

13. The court holds, as matter of law, that the defendants are entitled to judgment upon the pleadings and evidence dismissing this action. *Refused.*

582 Which said propositions of law marked "eleven," "twelve" and "thirteen" the court refused to hold, and marked "refused," to which refusal of the court to hold said propositions, and each of them separately, the defendants then and there excepted, and duly entered their exceptions herein.

And the defendants further asked the court to hold the following proposition of law, marked "fourteen," which the court held and marked "held":

14. The court holds as matter of law, that the plaintiff can not recover under the first five counts of his declaration, and also under the remaining counts of the declaration, or in other words, that a recovery on the first five counts would bar a recovery on the remaining counts. *Held.*

Said proposition fourteen was held by the court, and so marked "held," to which holding and ruling of the court the plaintiff then and there duly excepted, and duly entered his exception herein.

And on February 14, 1901, further proceedings were had in this cause, as follows:

FEBRUARY 14TH, THURSDAY, 1901—10:00 a. m.

BURKE
vs.
CRAWFORD ET AL.

Decision Rendered by Judge Dunne.

The COURT: I have fully considered the numerous briefs in this case and have reached the conclusion that there was a conversion of what is termed the reversionary interest in this stock by the defendants in this case, and that, therefore, if it was in trover they had a right to recover, and that it is not such a debt as is barred by the bankruptcy act.

I have also reached the conclusion, however, that the measure of damages as claimed by the plaintiff can not be allowed.
583 The object of the law is to grant a simple indemnity for a loss. An actual indemnity in this case would be what the stock was worth on the day that he demanded the stock; he was never entitled to the stock until May 20th. At that time Mr. Burke says that he went to the office with money sufficient to obtain this stock but that he was unable to obtain this stock.

Now Mr. Burke could have crossed the hall or gone to any stock-broker's office in this city at the time and purchased the stock for the exact amount with which he is credited on the books of the receiver of this company. That in my judgment is the actual loss in the case.

That being my view, I will render judgment for Mr. Burke for the amount shown by the books and interest from that day to the present at 5 per cent.

Mr. PENCE: Has your honor passed upon the propositions of law?

The COURT: Yes, I have marked most of them in pencil if the clerk will kindly ink them, some of them in ink and some in pencil.

Mr. BROWN: We desire first to except to the finding of the court.

The COURT: I expect both sides to do that.

Mr. BROWN: Well, I want to get this record right. We except to the finding of the court. And then I desire to make a motion for a new trial; I suppose that is likely to be overruled.

The COURT: Yes, I can dispose of that this morning. Let the record show a motion to set aside the finding of the court, motion overruled and exception, and motion for a new trial.

Mr. BROWN: I think I have a right within the term to file the motion and reasons in writing for a new trial and would like to except to the finding of the court overruling the motion for a new trial.

Now before the judgment there is just this, your honor, this is a case in which the plaintiff claims a *capias* should issue and
584 we should like to have the right or time to arrange for bond before judgment is entered. We don't think——

The COURT: Yes this matter is by no means clear and I will allow you any reasonable time that you desire to arrange for bond so as not to be placed under arrest.

Mr. MORAN: Well we want to be reasonable about the bond, but we want the judgment entered because we want them to go to the next term of the appellate court. We don't want any unreasonable rule with reference to this bond unless there was some unnecessary, unprecedented delay that would entitle us to take out process.

Mr. PENCE: I think I can pledge that Mr. Burke will not have them arrested.

The COURT: I will say in my opinion that the new bankruptcy act can easily bear two constructions, one favoring your contention, the other favoring Judge Moran's contention, but where it can receive two constructions I think the intent of the legislature ought to be sought and it was plainly, in my judgment, the intent of Congress in passing that act to prevent such debts as were created by fraud from being barred. I judge from the speeches of the gentlemen when the bill was passed in Congress that it was plainly their intent to exempt from the provisions of the bankruptcy act all debts created by fraud; that was certainly the intention of the old act, and while the phraseology was changed so as to bear the other construction I think the intent of the legislature was that such debts should not be barred.

Mr. BROWN: Your honor will remember that this is a great deal of a record and the bill of exceptions to be written up——

Mr. MORAN: Wait a minute, Mr. Brown, until we get our exceptions in.

We desire to preserve exceptions to the finding of the court and to the judgment so that if we see fit to file any cross errors we may do it.

585 The COURT: Yes there have been briefs on both sides, gentlemen.

Mr. BROWN: We understand that in making the appeal the case could go to the March term. The appellate court meets in March, does it not?

Mr. MORAN: Fifth of March.

Mr. BROWN: Yes, ten days after the first day of the term. The 30 days does not intervene between the last day of this term.

Mr. MORAN: Saturday is the last day of this term.

Mr. BROWN: Saturday is the last day of this term, and I believe it will be a physical impossibility for the clerk to get up our record.

The COURT: Why, it is a short record, isn't it?

Mr. BROWN: It is a great deal of a record.

The COURT: There was a good deal of talk and a good deal of authorities cited, but there was little evidence.

Mr. BROWN: There was a great deal of documentary evidence produced.

Mr. MORAN: That is a question with which this court has nothing to do; it has rendered its judgment. Counsel can always extend his time for filing a complete record in the court of appeals by filing a motion.

The COURT: Well, I will enter judgment to-day so as to force you if possible into the March term.

Mr. BROWN: I think we ought to be able to have more time.

Mr. PENCE: If only a copy of the decree was filed in the appellate court, they could amend their record afterwards. We don't want to be postponed on the docket, we want to get in so as to get as early a hearing as possible.

Mr. BURKE: I wish to call the court's attention to this: At the time the receiver, the Title & Trust Company, closed the account it computed the stock five hundred and fifty shares at 95 cents on the dollar.

The COURT: If I recollect his testimony he took the highest quotation on that day and gave you credit for it.

586 Mr. BURKE: Yes that is 95 cents, but out of the total amount that the stock came to he took $68.75 for commissions, he admitted that he did not sell any stock.

The COURT: Well, strike that out if he charged any commissions, for he could not charge any. Submit your figures to Mr. Brown to-day, make your computations and submit them to him and I will enter judgment to-day after you have agreed on that, on the figures. I don't think there will be any trouble about the time for the issuance of the *capias*.

Mr. BROWN: I am perfectly willing to take Mr. Pence's assurance that there will be no *capias* of arrest.

Mr. BURKE: For what length of time.

Mr. PENCE: Yes, for 30 days we will pledge ourselves.

Mr. BROWN: Very well, let these orders be entered.

The COURT: I will make the order to-day, Mr. Brown, after you gentlemen have got together.

Thereupon the court found the issues in the said cause for the plaintiff, and assessed his damages at the sum of $9,690, to which finding of the court the defendants, and also the plaintiff, then and there excepted, and duly entered their exceptions herein.

Whereupon the defendants, by their counsel, then and there moved to set aside the said finding of the court, which motion was overruled by the court, to which the defendants then and there excepted, and duly entered their exceptions herein.

Whereupon the defendant moved the court for another trial in

said cause, upon the ground that the said findings of the court were against the law of the evidence, and because of various errors of law made by the court, in the admission and exclusion of evidence, and in the holding and refusing of propositions of law, which said
587 motion for a new trial was overruled by the court.

To which overruling of said motion by the court the defendants then and there duly excepted, and entered their exceptions herein.

Thereupon the court gave judgment, and ordered that the plaintiff recover of the defendant- the sum of $9,690, and costs of issue, to which judgment of the court the defendants and also the plaintiff then and there duly excepted, and entered their exceptions herein.

Inasmuch as the matters above set forth do not appear of record, the defendants pray that the said court will set its hand and seal to this bill of exceptions, which is accordingly done this 6th day of March, A. D. 1901.

E. F. DUNNE,
Judge of the Circuit Court of Cook County.

Presented to me for ct. March 6 1901.

E. F. DUNNE.

588 And afterwards, to-wit: on the 5th day of March A. D. 1901 a certain appeal bond was filed in the office of the clerk of said court, in words and figures following, to-wit:

Know all men by these presents that we Richard C. Crawford and Edward A. Valentine, and Sarah L. Crawford and Edward H. Valentine of the county of Cook and State of Illinois, are held and firmly bound unto John E. Burke, also of the same county and State, in the penal sum of fifteen thousand dollars, lawful money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals this fourth day of March, A. D. 1901.

The condition of the above obligation is such, that whereas, the said John E. Burke did, on the 14th day of February A. D. 1901, in the circuit court of Cook county, in the State aforesaid, and of the January term thereof, A. D. 1901 recover a judgment against the above bounden Richard C. Crawford and Edward A. Valentine for the sum of nine thousand six hundred and ninety dollars and twenty-one cents, besides costs of suit; from which said judgment of the said circuit court of Cook county, the said Richard C. Crawford and Edward A. Valentine have prayed for and obtained an appeal to the appellate court, within and for the first district in said State.

Now therefore, if the said Richard C. Crawford and Edward A. Valentine shall duly prosecute their said appeal with effect, and moreover pay the amount of the judgment, costs, interests and damages rendered and to be rendered, against them in case the said

judgment shall be affirmed in said appellate court, then the above obligation to be void, otherwise to remain in full force and virtue.

RICHARD C. CRAWFORD. [SEAL.]
EDWARD A. VALENTINE. [SEAL.]
SARAH L. CRAWFORD. [SEAL.]
EDWARD H. VALENTINE. [SEAL.]

E. F. DUNNE, *Judge.*

O. K.
A. M. PENCE, *Pl'ff's Att'y.*

589 STATE OF ILLINOIS, } *ss:*
Cook County, }

I, John A. Cooke, clerk of the circuit court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record except the bill of exceptions, the original of which is incorporated herein by stipulation, in a certain cause lately pending in said court, on the common law side thereof, between John E. Burke plaintiff and Richard C. Crawford defendant.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 14th day of March, 1901.

JOHN A. COOKE, *Clerk.*

590 RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Appellants,
vs.
JOHN E. BURKE, Appellee.

And now come the said Richard C. Crawford and Edward A. Valentine, appellants, and say that in the proceedings aforesaid there is manifest error in this, to wit:

First. The court erred in holding in said cause certain propositions of law submitted by the plaintiff in said cause, the appellee in this court, and each of them, namely, the propositions of law submitted by the said plaintiff, John E. Burke, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

Second. The court erred in refusing to hold as a matter of law certain propositions of law and each of them, submitted by the defendants, Richard C. Crawford and Edward A. Valentine, in said cause, to wit: the propositions submitted by said defendants, the appellants herein, numbered 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, and 13.

Third. The court erred in finding the issues in said cause for the plaintiff.

Fourth. The court erred in not finding the issues in said cause for the defendants.

Fifth. The court erred in admitting improper and incompetent evidence offered by the plaintiff.

Sixth. The court erred in refusing to admit proper and competent evidence offered by the defendants.

591 *Seventh.* The court erred in rendering judgment for the plaintiff.

Eighth. The court erred in not rendering judgment for the defendants.

Ninth. The court erred in refusing to set aside its said finding upon the motion of the defendants.

Tenth. The court erred in refusing to grant a new trial of the said cause upon a motion of the defendants.

Eleventh. The finding and judgment of the court in the said cause is against the law and the evidence.

Twelfth. The court erred in not holding that the discharge in bankruptcy, proven by the defendants in said cause to have been granted to them during the pendency of said cause, was a bar to the said action.

Thirteeth. The court erred in not holding that the discharge in bankruptcy, proven by the defendants in said cause, to have been granted to them during the pendency of said cause, was a legal defense to said action.

Fourteenth. The court erred in holding that the special pleas filed by defendants respectively waived all other defenses to said action.

Fifteenth. The court erred in holding that any recovery on the facts proven could be had by the plaintiff in this form of action.

RICHARD C. CRAWFORD,
By PECKHAM, BROWN & PACKARD,
His Attorneys.

EDWARD A. VALENTINE,
By FLOWER, VROMAN & MUSGRAVE,
His Attorneys.

592 In the Appellate Court of Illinois, First District, March Term, A. D. 1901.

RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Appellants, vs. JOHN E. BURKE, Appellee.	Appeal from Circuit Court, Cook County.

And now comes John E. Burke, appellee in the above-entitled cause, and assigns cross errors, and says:

First. The court below erred in holding, as a matter of law, the ninth proposition of law submitted to it by the said appellants.

Second. The court below erred in holding, as matter of law, the tenth proposition of law submitted to it by the said appellants.

Third. The court below erred in holding, as matter of law, the fourteenth proposition of law submitted to it by the appellants.

Fourth. The court below erred in adopting a wrong rule or measure of damages in assessing or estimating the appellee's damages in this case.

Fifth. The court below erred in taking the market price or value of the stock in controversy on the 20th or 21st day of May, 1895, as the basis on which to assess or estimate the appellee's damages in this case.

Sixth. The court below erred in not allowing the appellee the amount of damages shown in the evidence to have been sustained by him, by reason of the matters alleged in the several counts of his declaration.

Seventh. The court below erred in rendering judgment in favor of appellee for only the sum of $9,690.21, when, according to the law and the evidence in said cause, the court should have rendered judgment in favor of appellee for a much larger sum, to wit: the sum of $20,000.

Wherefore, the said appellee prays that the judgment rendered in his favor in the court below be increased, and that judgment
593 be rendered in his favor and against the appellants, by this court, for the said sum of $20,000.

JOHN E. BURKE,
By T. A. MORAN AND
A. M. PENCE,
Attorneys for Appellee.

In the Appellate Court, First District, Illinois.

R. C. CRAWFORD ET AL., Appellants,
vs.
J. E. BURKE, Appellee.
} No. 9943.

Appeal from Cook circuit.

I, Thomas N. Jamieson, clerk of the appellate court, within and for the first district of Illinois hereby certify that the transcript of record hereto attached and marked A is the original transcript of record filed in said appellate court on the 14th day of March A. D. 1901 by said appellants.

In testimony whereof, I have hereunto set my hand and seal of said court, at Chicago, this 21st day of July A. D. 1902.

THOMAS N. JAMIESON,
Clerk of the Appellate Court,
First District, Illinois.

[SEAL.]

594 At a term of the appellate court, begun and held at Chicago, on Tuesday, the 4th day of March in the year of our Lord one thousand nine hundred and two within and for the first district of the State of Illinois.

Present, Hon. Henry V. Freeman, presiding justice.
" " Arba A. Waterman, justice.
" " Henry M. Shepard, justice.
Thomas N. Jamieson, clerk. Earnest J. Magerstadt, sheriff.

R. C. CRAWFORD ET AL., Appellants,
vs.
J. E. BURKE, Appellee. } No. 9943.

Appeal Cook circuit. Error to Cook.

Filed Sep. 18, 1902.

C. MAMER,
Clerk of Supreme Court.

Be it remembered, that on the 28th day of May A. D. 1901, it being one of the days of the March term, A. D. 1901, certain proceedings were had in said court and entered of record in words and figures following, to-wit.

595 R. C. CRAWFORD ET AL.
vs.
J. E. BURKE. } 9943. Appeal Circuit.

This day came appellee and moved the court to extend the time fifteen days to file briefs; and the court being fully advised doth order that said time be extended.

And afterwards, on the 14th day of June, A. D. 1901, the following proceedings were had and entered of record in said cause, to-wit:—

596 R. C. CRAWFORD ET AL.
vs.
J. E. BURKE. } 9943. Appeal Circuit.

This day came appellee and moved the court to extend the time five days to file briefs; and the court being fully advised doth order that said time be extended.

And afterwards, on the 19th day of June, A. D. 1901, the following proceedings were had and entered of record in said cause, to-wit:—

597 R. C. CRAWFORD ET AL. vs. J. E. BURKE. } 9943. Appeal Circuit.

This day came appellee and moved the court to extend the time to June 29, to file briefs, and that the appellants may have ten days thereafter to file reply briefs; and the court being fully advised doth order that said time be extended.

And afterwards, on the 9th day of July, A. D. 1901, the following proceedings were had and entered of record in said cause, to-wit:—

598 R. C. CRAWFORD ET AL. vs. J. E. BURKE. } 9943. Appeal Circuit.

This day came appellants and moved the court to extend the time to July 20, 1901, to file a reply brief; and the court being fully advised doth order that said time be extended.

And afterwards, on the 10th day of July, A. D. 1901, the following proceedings were had and entered of record in said cause, to-wit:—

599 R. C. CRAWFORD ET AL. vs. J. E. BURKE. } No. 9943. Appeal from Circuit.

This cause having this day been reached in the call of the docket, and no one appearing to argue the same, and the court, not being fully advised in the premises, doth order that said cause be taken under advisement on briefs filed and to be filed by appellee by Oct. 1, 1901.

And afterwards, on the 25th day of April, A. D. 1902, the same being one of the days of the March term, 1902, of said court, the following proceedings were had and entered of record in said cause, to-wit:—

600 R. C. CRAWFORD ET AL. vs. J. E. BURKE. } 9943. Appeal Circuit.

This day came appellee and moved the court for leave to cite additional authorities and to correct the briefs filed herein, and the court being fully advised doth order that said motion be allowed.

And afterwards, on the 2nd day of July, A. D. 1902, the following proceedings were had and entered of record in said cause, to-wit:—

601 RICHARD A. CRAWFORD and EDWARD A. Valentine, Appellants, vs. JOHN E. BURKE, Appellee. } No. 9943. Appeal Cook Circuit.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that one of the justices of this court took part in the trial of the case below, and that the two remaining justices are unable to agree on the case as presented by the record and proceedings aforesaid, and it therefore appearing that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error; therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellee recover of and from the said appellants his costs, by him in this behalf expended, to be taxed, and that he have execution therefor.

And afterwards, on the 11th day of July, A. D. 1902, the following proceedings were had and entered of record in said cause, to-wit:—

602 RICHARD C. CRAWFORD and EDWARD A. Valentine vs. JOHN E. BURKE. } No. 9943. Error to Cook. Appeal from Cook Circuit.

This day came appellants by their counsel, and moved the court for an appeal from the order and judgment of this court in said cause to the supreme court of Illinois; and the court being fully advised in the premises, doth order that an appeal be allowed herein to the said supreme court, on condition that appellants do within twenty days from this date, execute and file in said cause a good and sufficient appeal bond, conditioned according to law, in the penal sum of fifteen thousand dollars, with surety thereto, to be approved by the court.

And afterwards on the 21st day of July A. D. 1902, the following proceedings were had and entered of record in said cause, to-wit:

603 R. C. CRAWFORD ET AL. vs. J. E. BURKE. } No. 9943. Error to Cook. Appeal from Cook Circuit.

This day came appellants by their counsel, and presented their certain appeal bond in said cause in the penal sum of fifteen thousand dollars, with Edward H. Valentine and Sarah L. Crawford as surety- thereto; and the court, being fully satisfied as to the qualifications of said surety-, doth order that said appeal bond be, and the same is hereby taken, approved and filed herein.

And afterwards, on the same day, to-wit: the 21st day of July A. D. 1902, an appeal bond was filed in said cause, which said bond is in the words and figures following, to-wit:—

604 Know all men by these presents, that we, Richard C. Crawford and Edward A. Valentine, as principals, and Edward H. Valentine and Sarah L. Crawford, as sureties, all of the county of Cook and State of Illinois, are held and firmly bound unto John E. Burke, also of the same county and State, in the penal sum of fifteen thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this 16th day of July, A. D. 1902.

The condition of the above obligation is such that whereas, the said John E. Burke did, on the 14th day of February, 1901, in the circuit court of Cook county, in the State aforesaid, and of the January term thereof, A. D. 1901, recover a judgment against the said Richard C. Crawford and Edward A. Valentine for the sum of nine thousand six hundred ninety dollars, besides costs of suit, from which said judgment of the said circuit court of Cook county, the said Richard C. Crawford and Edward A. Valentine prayed for and obtained an appeal to the appellate court within and for the first district of said State, and whereas, the said appellate court did, on the 2nd day of July, A. D. 1902, and at the March term thereof, A. D. 1902, affirm the judgment of the court aforesaid, and did render judgment against the above bounden Richard C. Crawford and Edward A. Valentine for costs of suit, from which order of affirmance and judgment of the said appellate court the said Richard C. Crawford and Edward A. Valentine have prayed for and obtained an appeal to the supreme court of the State of Illinois.

605 Now therefore, if the said Richard C. Crawford and Edward A. Valentine shall duly prosecute their said appeal with effect, and moreover pay the amount of the judgment, costs, interests and damages rendered and to be rendered against said Richard C. Crawford and Edward A. Valentine in case the said judgment shall

be affirmed in said supreme court, then the above obligation to be void, otherwise to remain in full force and virtue.

SARAH L. CRAWFORD. [SEAL.]
EDWARD A. VALENTINE. [SEAL.]
EDWARD H. VALENTINE. [SEAL.]
RICHARD C. CRAWFORD. [SEAL.]

Approved.

HENRY V. FREEMAN, *P. J.*

O. K.

JOHN E. BURKE, *Appellee.*

606 I, Thomas N. Jamieson, clerk of the appellate court, in and for the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings and appeal bond of the said appellate court in the above entitled cause, of record in my office.

[SEAL.] In testimony whereof, I have set my hand and affixed the seal of the said appellate court, at Chicago, this 21st day of July in the year of our Lord one thousand nine hundred and two.

THOMAS N. JAMIESON,
Clerk of the Appellate Court of the First District.

607 RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Appellants, *vs.* JOHN E. BURKE, Appellee. } Appeal from the Appellate Court of the First District to the Supreme Court of Illinois.

And now come the said Richard C. Crawford and Edward A. Valentine, appellants, in the supreme court of Illinois, and say that in the proceedings in the appellate court of the first district, there is manifest error, in this, to-wit:

First. The said appellate court of the first district erred in affirming the judgment in said cause in favor of the plaintiff rendered by the circuit court of Cook county.

Second. The said appellate court of the first district erred in not reversing the judgment of the circuit court of Cook county in favor of the plaintiffs, against the defendant in the aforesaid cause.

Third. The said appellate court of the first district erred in not reversing the judgment of the circuit court of Cook county in the said cause in favor of the plaintiffs, or in not reversing the said judgment and remanding the said cause to said circuit court of Cook county.

Fourth. The said appellate court of the first district erred
608 in rendering a judgment for costs in the said appellate court in favor of the appellee in said cause against the said appellants.

Fifth. The said appellate court of the first district erred in not ren-

dering a judgment for costs against the appellee in said cause in favor of the said appellants.

Sixth. The said appellate court of the first district erred in not holding that the fifteen several assignments of error assigned by the appellants as error in the proceedings of the circuit court of Cook county, were well assigned, and therefore erred in not reversing said judgment or in not reversing said judgment and remanding said cause to the circuit court of Cook county.

Seventh. The said appellate court of the first district erred in not holding that in said cause certain propositions of law submitted by the plaintiff in the circuit court, the appellee in the appellate court and in this court, and each of them, to the circuit court of Cook county, and numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), should not have been held by the circuit court of Cook county, and therefore erred in affirming the judgment of said circuit court in said cause.

Eighth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in refusing to hold as a matter of law certain propositions of law and
609 each of them submitted by the defendants, Richard C. Crawford and Edward A. Valentine, in said cause to said circuit court, namely, the propositions submitted to said circuit court by said defendants in said court, (the said appellants in the appellate court, and in the supreme court,) numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), and thirteen (13), and the said appellate court erred in therefore affirming the judgment of the circuit court in said cause.

Ninth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in finding the issues in said cause for the plaintiff, and therefore said appellate court erred in affirming the said judgment of said circuit court.

Tenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in not finding the issues in said cause for the defendants, and therefore said appellate court erred in affirming the said judgment of said circuit court.

Eleventh. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in admitting improper and incompetent evidence offered by the plaintiff, and therefore in affirming the said judgment of said circuit court.

Twelfth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in refus-
610 ing to admit proper and competent evidence offered by the defendants, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Thirteenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in rendering judgment for the plaintiff, and therefore the appellate court erred in affirming the said judgment of said circuit court.

Fourteenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in not rendering judgment for the defendants, and therefore the appellate court erred in affirming the said judgment of said circuit court.

Fifteenth. The said appellate court of the first district erred in not holding that the circuit court erred in refusing to set aside its findings upon motion of the defendants, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Sixteenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in refusing to grant a new trial of the said cause upon the motion of the defendants, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Seventeenth. The said appellate court of the first district erred in not holding that the findings and judgment in the circuit
611 court of Cook county in said cause were against the law and the evidence, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Eighteenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in not holding that the discharge in bankruptcy proven by the defendants in the circuit court, (the appellants in the said appellate court,) to have been granted to them during the pendency of said cause, was a bar to the said action, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Nineteenth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in not holding that the discharge in bankruptcy proven by the defendants in the said circuit court, (the appellants in the said appellate court,) to have been granted to them during the pendency of said cause, was a legal defense to said action, and therefore the appellate court erred in affirming the said judgment of said circuit court.

Twentieth. The said appellate court of the first district erred in not holding that the circuit court of Cook county erred in holding that the special pleas filed by the defendants, respectively, waived all other defenses to said action, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

Twenty-first. The said appellate court of the first district
612 erred in not holding that no recovery on the facts proven, could be had by plaintiff in this form of action, and therefore the said appellate court erred in affirming the said judgment of said circuit court.

RICHARD C. CRAWFORD,
By PECKHAM, BROWN & PACKARD,
His Attorneys.

EDWARD A. VALENTINE,
By FLOWER, VROMAN & MUSGRAVE,
His Attorneys.

613 In the Supreme Court of Illinois, October Term, 1902.

RICHARD C. CRAWFORD and EDWARD A. Valentine, Appellants, vs. JOHN E. BURKE, Appellee.	Appeal from the Appellate Court, First District.

Cross Errors.

And now comes John E. Burke, appellee in the above-entitled cause, and assigns cross errors, and says:

1. The said appellate court erred in not holding that the circuit court erred in holding the 9th proposition of law submitted to it by the appellants.

2. The said appellate court erred in not holding that the circuit court erred in holding the 10th proposition of law submitted to it by the appellants.

3. The said appellate court erred in not holding that the circuit court erred in holding the 14th proposition of law submitted to it by the appellants.

4. The said appellate court erred in not holding that the circuit court erred in not allowing the appellee the amount of damages shown by the evidence to have been sustained by him.

5. The said appellate court erred in not holding that the circuit court erred in rendering judgment in favor of appellee for only the sum of $9,690.21, when, according to the evidence in said cause, the circuit court should have rendered judgment in favor of appellee for a much larger sum, to wit, the sum of $20,000.

Wherefore, the appellee prays that the judgment rendered in his favor in the court below, and affirmed in said appellate court, be increased, and that judgment be rendered in this court in his favor and against the appellants for the said sum of $20,000.

JOHN E. BURKE, *Appellee.*

614 In the Supreme Court of Illinois, Northern Grand Division, October Term, 1902.

RICHARD C. CRAWFORD and EDWARD A. Valentine, Appellants, vs. JOHN E. BURKE, Appellee.	Appeal from Appellate Court, First District.

Additional Cross-errors.

And now comes the appellee in the above entitled cause, and, by leave of the court, assigns upon the record and in his brief the following additional cross-errors:—

6. The appellate court erred in not holding that the circuit court

erred in adopting a wrong rule or measure of damages in assessing or estimating the appellee's damages in this case.

7. The appellate court erred in not holding that the court below erred in taking the market price or value of the stock in controversy on the 20th or 21st day of May, 1895, as the basis on which to assess or estimate the appellee's damages in this case.

JOHN E. BURKE, *Appellee.*

PENCE & CARPENTER AND
T. A. MORAN,
Of Counsel.

615 And afterwards, to-wit: on the 17th day of October, A. D. 1902, certain proceedings were had in said court, and entered of record, among which is the following, viz:

RICHARD C. CRAWFORD and EDWARD A. Valentine
vs.
JOHN E. BURKE.
} 2689. Appeal from Appellate Court of Illinois, First District.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— —— appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee —— —— having entered motion to affirm said judgment and for costs and *procedendo*, and said motion being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

616 At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. B. H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the eighteenth day of February, A. D. 1903, the same being one of the days of the term of court aforesaid

the following proceedings were by said — court, had and entered of record, to wit:

RICHARD C. CRAWFORD and EDWARD A. Valentine *v.* JOHN E. BURKE.	No. 2689. Appeal from Appellate Court of Illinois, First District.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error, and it is further considered by the court, that the said appellee recover of and from the said appellants his costs by him in this behalf expended, and that he have execution therefor:

617 And afterwards, to-wit: on the fourth day of March, A. D. 1903, there was filed in the office of the clerk of said court, a certain petition for writ of error, and order granting the same, which said petition and order are in the words and figures following, viz:

618 In the Supreme Court of the United States and in the Supreme Court of the State of Illinois.

RICHARD C. CRAWFORD and EDWARD A. Valentine, Appellants, *vs.* JOHN E. BURKE, Appellee.	No. 2689 in the Supreme Court of Illinois.

To the honorable chief justice of the supreme court of the State of Illinois:

The petition of Richard C. Crawford and Edward A. Valentine respectfully shows that on the 18th day of February, A. D. 1903 the supreme court of the State of Illinois rendered a judgment against your petitioners in a certain cause wherein your petitioners Richard C. Crawford and Edward A. Valentine were appellants and John E. Burke was appellee, it being a cause in which your petitioners the said Richard C. Crawford and Edward A. Valentine had appealed from the appellate court of the first district of Illinois to the supreme court of Illinois. The said cause in the appellate court was one in which the said Richard C. Crawford and Edward A. Valentine were

appellants and the said John E. Burke was appellee, and was an appeal from the circuit court of Cook county in a cause in
619 which the said John E. Burke was plaintiff and the said Richard C. Crawford and Edward A. Valentine were defendants.

The said judgment of the supreme court of Illinois in said cause was in the words and figures following, as will appear by reference to the record and proceedings in said cause:

"And now, on this day, this cause having been argued by counsel, "and the court having diligently examined and inspected, as well "the record and proceedings aforesaid, as the matters and things "therein assigned for error, and being now sufficiently advised of "and concerning the premises, for that it appears to the court now "here, that neither in the record and proceedings aforesaid, nor in the "rendition of the judgment aforesaid, is there anything erroneous, "vicious or defective, and that in that record there is no error: "Therefore it is considered by the court, that the judgment aforesaid "be affirmed in all things and stand in full force and effect, not-"withstanding the said matters and things therein assigned for "error, And it is further considered by the court, that the said "appellee recover of and from the said appellants his costs by him "in this behalf expended, and that he have execution there-"for."

620 The said supreme court of Illinois at the time of rendering the said judgment, filed an opinion in the said cause, a copy of which opinion is annexed hereto marked Exhibit "1."

And your petitioners respectfully show that there was a judgment in the said cause in the circuit court of Cook county in favor of John E. Burke against your petitioners for the sum of nine thousand, six hundred and ninety dollars ($9,690) and costs, and that the judgment in the appellate court of the first district of Illinois was an affirmance of the judgment in said circuit court of Cook county in favor of said Burke against your petitioners, together with a judgment for the costs of said appeal in said appellate court, and that the judgment in the supreme court of Illinois was a judgment of affirmance of the said judgment of the said appellate court, and of said circuit court and for the costs of said appeal in said supreme court, and that its result is to make so far as the highest court of the said State of Illinois can decide said cause, a judgment effective and valid against your said petitioners for nine thousand, six hundred and ninety dollars ($9,690) and judgments for the costs of suit in the three courts aforesaid.

And your petitioners further respectfully show that the said supreme court of Illinois is the highest court of the State of Illinois in which a decision in said suit could be had.

And your petitioners claim the right to remove said judg-
621 ment to the Supreme Court of the United States by writ of error under the statutes of the United States authorizing writs of error to State courts under section 709 of the Revised Statutes of the United States and section 999 of the Revised Statutes of

the United States, because the said petitioners claimed in said circuit court and in said appellate court and in said supreme court of the State of Illinois that as to the cause of action and liability set up by the pleadings in said cause by the said John E. Burke as against them the said petitioners, they had been duly discharged in bankruptcy under the act of the Congress of the United States approved July 1st, 1898 entitled "An act to establish a uniform system of bankruptcy throughout the United States."

And because the said John E. Burke did not deny the bankruptcy proceedings and the discharge of the defendants under the said act above named, but replied that said causes of action in the declaration in said cause mentioned were not in respect of a debt or claim made proveable by acts of Congress relating to bankruptcy against the individual or co-partnership estates of the said defendants, and that each of the said causes of action were in respect of such debts, claims, demands or damages excepted from the operation of the discharge in bankruptcy by the said acts of Congress. And because the said acts as to said plea of the discharge in bankruptcy and of said replication turned wholly upon the construction to be given to section 17 of chapter 3 of said act of Congress approved July 1st, 1898 entitled "An act to establish a uniform system of bankruptcy throughout the United States," and upon such construction as might be given to section 63 of chapter 7
622 of said bankruptcy act above described, and because the said circuit court of Cook county decided that said cause of action so stated in the pleadings in said cause by the said declaration of the said John E. Burke against your petitioners was not such a case as was released or discharged by the discharge in bankruptcy which your petitioners averred and which was admitted to have been granted by the district court of the United States for the northern district of Illinois; and because the said appellate court affirmed the said judgment and the said supreme court of Illinois, being the highest court in said State of Illinois in which a decision in said cause could be obtained, affirmed said judgments and decisions of the said circuit court of Cook county and the appellate court of the first district and thereby held that the said causes of action were not such as were discharged by a discharge in bankruptcy granted as aforesaid.

And your petitioners further claim the right to remove said judgment by writ of error to the Supreme Court of the United States under the aforenamed statutes of the United States because, they say, that the said circuit court of Cook county, Illinois, and the said appellate court of the first district of Illinois in affirming said judgment of said circuit court of Cook county and the said supreme court of the State of Illinois in affirming the judgments of the said appellate court of the first district of Illinois and of the circuit court of Cook county, held also that the evidence in said cause presented by the said John E. Burke showed a cause of action which was not dischargeable or released under the said 17th section of
623 the bankruptcy act above described, and your petitioners aver that such dscision beyond and above and irrespective of

the decision concerning the cause of action as set forth in the declaration of said John E. Burke in said cause involves the construction of the said 17th section of the said bankruptcy act above described, all of which appears by the record of the proceedings in the said cause in the said supreme court of Illinois.

Wherefore your petitioners say that by a final judgment in a suit in the highest court of the State of Illinois in which a decision in a suit could be had, there was a right, title, privilege and immunity claimed under a statute of the United States by your petitioners and the decision was against the right, title, privilege and immunity which was especially set up and claimed by your petitioners under such statute, and wherefore and in accordance with the statute made and provided therefor your petitioners pray for an allowance of a writ of error returnable into the Supreme Court of the United States and of a citation and supersedeas.

And they will ever pray.

RICHARD C. CRAWFORD,
EDWARD A. VALENTINE,
Petitioners.
EDWARD O. BROWN,
Of Peckham, Brown & Packard,
CHARLES E. VROMAN,
Of Musgrave, Vroman & Lee,
Counsel for Petitioner.

624 EXHIBIT 1.

At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit, on the eighteenth day of February, 1903, the opinion of the court was filed in the words and figures following, to-wit:

RICHARD A. CRAWFORD ET AL.
vs.
JOHN E. BURKE.
} No. 2689. Error to ——. Appeal from First District.

625 Docket No. 2689, Agenda 25, Oct., 1902.

RICHARD C. CRAWFORD ET AL.
v.
JOHN E. BURKE.

Mr. Justice CARTER delivered the opinion of the court:

This was an action on the case, brought in the Cook circuit court by John E. Burke, the appellee, against Richard C. Crawford and Edward A. Valentine, the appellants, to recover damages for the wrongful and fraudulent conversion of certain shares of stock belonging to the plaintiff, and of the proceeds of the sale thereof, or of his reversionary interest therein, to their own use, as alleged in the first five counts of the declaration, and as alleged in the last five counts, for false and fraudulent representations made by the defendants to the plaintiff, to the effect that they had and held, on purchases made by them at his request, a certain large number of shares of said stock, in order to obtain, and whereby they did obtain, from him large sums of money as margins or part payments on such stock, when in truth and in fact they did not have or hold such shares of stock, but had previously, without his knowledge or consent, sold the same on their own account, with intent, as alleged in all the counts, to cheat and defraud the plaintiff. The suit was brought in 1897, and the defendants pleaded not guilty. Afterward, in 1901, Congress having in the meantime enacted the bankrupt law of 1898, and the defendants having, in proceedings thereunder, been duly discharged in bankruptcy, they filed their separate pleas *puis darrein continuance* setting up such discharge, and also, in the same pleas, traversing the positive fraud and fraudulent intent alleged in the declaration. Replications were filed by the plaintiff, not denying the bankruptcy proceedings and the defendants' discharge therein, but taking issue, in the language of the pleas, on the matter averred in them traversing the alleged fraud. A jury was waived, trial had by the court, and judgment was rendered for the plaintiff for $9690 and costs. The defendants appealed. One of the judges of the appellate court having heard the cause on a former trial took no part, and the other two judges being unable to agree, the judgment was affirmed. The defendants then took this appeal to this court.

The evidence tends to prove that the defendants were associated together as partners, doing business in Chicago as stock
626 brokers, and that in 1894 and 1895, acting as the brokers and agents of the plaintiff, they purchased at his request, from time to time, through other brokers in Philadelphia on the

stock exchange in that city, upwards of one hundred shares of Metropolitan Traction stock, and also by agreement with the plaintiff took over a large number of other shares of the same stock from other brokers, agents of the plaintiff, who had previously purchased and were carrying the same for him, until the defendants had and held for him five hundred and fifty shares of such stock, upon which he had paid the required margins or payments on account of such stock to a large amount of money, and which said stock the defendants agreed to carry for the plaintiff, he having agreed to make such further payments on the purchase price as should be required, and which agreement he had faithfully performed on his part. At one time, about April 1, 1895, when the defendants, by the course of dealings between the parties, should have had for the plaintiff, as they then represented to him they did have and were carrying for him, five hundred and fifty shares of said stock, the defendants demanded of him, because of a falling market, $3800 as further margins or payments on that number of shares, and which amount he then paid, when the truth was that they had previously sold all but fifty of said shares without his consent or knowledge and without having rendered to him any account for the same whatever. They were then insolvent, and about May 20, following, failed in business and a receiver was appointed. Shortly before such failure plaintiff offered to pay the balance of the unpaid purchase price due on said five hundred and fifty shares and demanded delivery to him, but the defendants were wholly unable to comply with the demand.

The principal question in the court below was and in this court also is, whether or not recovery by the plaintiff was barred by the discharge in bankruptcy set up in the pleas *puis darrein continuance*. This question is presented by the holding of the court as law in the decision of the case, certain propositions asked by the plaintiff, applicable, respectively, to different ones of the several alleged tortious acts of the defendants. It will be necessary to state here only one of such propositions, viz., the second:

2. "If the evidence shows that the defendants were acting as the brokers and agents of the plaintiff, and that on or about the
627 10th day of January, 1895, the defendants as such brokers and agents, were carrying for him, and had in their possession or under their control for the plaintiff and belonging to him, four hundred shares of Metropolitan Traction stock in controversy in this cause, and that on or about the said 10th day of January, 1895, the defendants, without the knowledge or consent of the plaintiff, sold or caused to be sold one hundred shares of said stock, and converted or appropriated to their own use the said one hundred shares, or the proceeds of the sale thereof, or the plaintiff's reversionary interest in said one hundred shares or his interest in said proceeds, and that such sale, conversion or appropriation was made with the intent to commit upon the plaintiff a positive fraud, involving intentional wrong, then the court holds that the defendants' conduct was such that their discharge in bankruptcy is not a legal defense to

plaintiff's claim for such damages, if any, as he may have sustained by reason of such sale, conversion or appropriation."

The court refused to hold as law in the case, at the request of the defendants, that the discharge in bankruptcy was a bar to any recovery in the case by plaintiff, under his declaration.

There was sufficient evidence for the court to find the facts as they were hypothetically stated in the plaintiff's propositions and also substantially as they were alleged in the declaration, but whether such debt or liability was released by the discharge in bankruptcy depends on the proper construction to be given to the act of Congress. Section 17 of the present bankruptcy act is as follows: "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity."

The construction contended for by the defendants is, that even if the plaintiff's demands be held to be a debt created by
628 the fraud of the defendants, still such debt was barred by the discharge in bankruptcy because it was not created while they were acting as officers or in any fiduciary capacity. Leaving out matter not applicable to this case, the section reads: "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as * * * (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity." The defendants were not acting as officers, and it is conceded that they were not acting in any fiduciary capacity within the meaning of the statute, but appellants insist that the phrase "while acting," etc., qualifies and limits all that precedes it in this the fourth exception, so that the act of fraud, embezzlement or misappropriation must have been committed while the defendants were acting as officers or in some trust capacity. While the meaning of the statute is not as clear as it might have been made, we are of the opinion the true construction is this: that the discharge will not release a bankrupt from his debt created (1) by his fraud; (2) by his embezzlement; (3) by his misappropriation; (4) by his defalcation while acting as a public officer or in any fiduciary capacity. Such is the grammatical construction of the sentences as punctuated, and while punctuation is not necessarily a part of the statute and is not controlling, and may even be wholly disregarded when necessary to give effect to the intention of the legislature otherwise appearing, still it is proper for consideration in determining the grammatical construction of written language, and may shed some

light on the meaning of a statute when otherwise doubtful. Osborn v. Farrell, 87 Ill. 89; 23 Am. & Eng. Ency. of Law, 334; 11 id. 521, and cases there cited; Hamilton v. Steamboat, etc. Co. 16 Ohio St. 428; Joy v. St. Louis, 138 U. S. 32; Cushing v. Warwick, 9 Gray, 385; State v. Jernigan, 3 Murphy, 18.

But other reasons of a more potent character may be given for the construction we adopt. In the first place, the former bankruptcy act of 1867 excepted from the operation of the discharge, debts created by the fraud or embezzlement of the bankrupt acting as an individual, and the word "defalcation" in that act was confined to public officers and those acting in a fiduciary capacity. Section 33 of the act provided "that no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer
629 or while acting in any fiduciary character, shall be discharged under this act, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt." (U. S. Rev. Stat. 5117.) In Strong v. Bradner, 114 U. S. 555, it was held that a debt fraudulently contracted by commission merchants was not released by their discharge in bankruptcy under the act of 1867, and that the term "fraud" in that act meant positive fraud, involving moral turpitude or intentional wrong, and not mere constructive fraud. (See, also Forsyth v. Vehmeyer, 117 U. S. 117; 176 Ill. 359.) Such having been the construction placed on the former act, the present one, though not equally clear, being substantially the same, should receive the same construction. (Lowell on Bankruptcy, p. 395; Black on Interpretation of Laws, 161; *In re* Rasch, 97 Fed. Rep. 761.) Had Congress intended to make so important a change in the law in the respect mentioned as appellants contend was made by the act of 1898, we would expect to find in the statute language clearly evincing such intention. A mere change in phraseology, apparently for the sake of brevity, rendering the meaning somewhat obscure, cannot be regarded as showing a legislative intent to depart so radically from precedents established by previous bankruptcy legislation and judicial decisions as to provide that debts created by the fraud or embezzlement of the bankrupt should be released by his discharge in bankruptcy, unless such fraud or embezzlement should be committed while the bankrupt was acting as a public officer or in a fiduciary capacity. (See Willis v. Eastern, etc. Co. 169 U. S. 295; Potter's Dwarris, 181, note.) In the second place the second exception to the operation of the discharge is, "judgments in actions for frauds," etc. Such judgments were doubtless excepted to avoid the otherwise reasonable construction that as judgments, like other judgments merging the cause of action, they would come within the operation of the discharge in bankruptcy. (Frey v. Torrey, 73 N. Y. Supp. 201.) But it was still necessary to make provision for debts fraudulently created,—that is, those created by fraud in fact,—where no judgment had been obtained, and this was done in the fourth exception. No good reason can be perceived why a judgment for fraud should be excepted from the operation of the discharge and not a debt or an ob-

ligation created by fraud or crime. In the next place,
630 while our attention has not been called to any decision of the Supreme Court of the United States construing this part of the statute of 1898, we are of the opinion that the weight of authority supports the construction we have given. (See authorities already cited, and Bracken *v.* Milner, 104 Fed. Rep. 522; *In re* Cole, 106 *id.* 106; Frey *v.* Torrey, 73 N. Y. Supp. 201; 75 *id.* 40; 76 *id.* 332.) Cases holding a contrary view are cited by appellants, but we cannot regard them as controlling or as supported by correct judicial reasoning.

Counsel for appellants contend, however, that their alleged fraud was only implied or constructive fraud, and not fraud in fact, involving intentional wrong doing or moral turpitude, and that even if opposing counsel be correct in their interpretation of the statute, still the discharge of appellants would release their said debt so created by their constructive fraud. The law undoubtedly is, and all the authorities so hold, that the fraud must be fraud in fact and not merely fraud implied by law. It must be positive fraud, involving moral turpitude. It seems clear, however, that the declaration in this case sufficiently charges the *mala fides* of the defendants in the transaction, setting forth their wrongful and fraudulents acts, and that such acts were done with intent to cheat and defraud the plaintiff, and there can be no doubt that the evidence is legally sufficient to support the declaration.

But we cannot agree with appellants that this case comes to this court precisely as it went to the appellate court. The judgment of the appellate court is as conclusive upon all controverted questions of fact in this case as in any other, notwithstanding the recitals in the judgment of affirmance showing the disagreement between the two judges who considered the case in that court. The statute makes no exception of such a case. We must regard all questions of fact as settled against appellants, and this includes all inferences of fact arising from facts actually proved. There is no evidence in the record except that produced on behalf of the plaintiff. On behalf the defendants, one of them offered himself as a witness to disprove the alleged fraud in the transactions complained of. On objection of the plaintiff the testimony was not admitted, and the ruling was excepted to. This ruling of the court was based on the view that the pleas *puis darrein continuance* waived
all prior pleas and admitted the cause of action as alleged
631 in the declaration, and constituted the discharge in bankruptcy the sole defense. We have held that such a plea waives all prior pleas, and that no defense can be urged except that set up in the plea *puis*. (Mount *v.* Scholes, 120 Ill. 394; City of East St. Louis *v.* Renshaw, 153 *id.* 491; Angus *v.* Chicago Trust and Savings Bank, 170 *id.* 298.) Upon this view of the law the court also held certain propositions, asked by the plaintiff, as law in the decision of the case, to the effect that all the material matters of fact alleged in the declaration stood admitted by the pleadings. Whether this well settled rule of pleading was strictly applicable in this case

in view of the character of the plea and the issue taken on it by the plaintiff we consider it unnecessary to decide, inasmuch as the judgment of the court was correct, independently of the rulings complained of. In the first place, after the court had sustained plaintiff's objection to the testimony of the defendants as to their good or bad faith in the transactions complained of, the plaintiff withdrew, in open court, his objections to such testimony, and stated that the same might be admitted without objection, but the defendants declined to avail themselves of such withdrawal and refused to call any witness, and it is evident from the record that they preferred to save their exception for appeal, rather than to have the defendants heard as witnesses in the case. We must hold that appellants waived the alleged error of which they are now complaining.

In the next place, it was not necessary to the judgment which was rendered, as the record stood, to decide whether the allegations of the declaration were admitted by the pleadings or not. They were established by the proof which had been adduced by the plaintiff, and the propositions held as law on that branch of the case being correct, judgment for plaintiff necessarily followed, unless, indeed, the contracts and dealings between the parties involved in the suit were, under the laws of this State, illegal and void, as now contended by appellants. And this brings us to that feature of the case,—that is to say, the appellants contend in this court, that by the contracts and dealings between the parties it was not contemplated that the shares of stock purchased by the defendants for the plaintiff were to be delivered to him, but only that settlements should be made upon the basis of differences between the contract and the market prices;
or, that the parties were dealing in options and their con-
632 tracts were gambling contracts, in violation of the law and public policy of this State, and that no recovery can be had on any matter arising out of them. The record gives no hint, by pleading, evidence or propositions of law, that this question was raised or sought to be raised in the trial court, and it is approached in this court by both parties with great caution and evident reluctance. While it is doubtless true that the parties to a cause cannot, by act or omission of their own, compel courts of justice to enforce contracts, or supposed rights growing out of contracts, which are forbidden by law, and while courts may, for the preservation of their own dignity and for the public welfare, compel investigation in that regard before deciding the cause (Oscanyan *v.* Arms Co., 103 U. S. 261; Wright *v.* Cudahy, 168 *id.* 86); still, we are unable to see how we can on this record pass on the question here as one of law. If the question, though not mentioned in the record, might be considered as embraced in some of the general propositions of law asked by the defendants but refused by the court, it is sufficient to say that there was some evidence on the part of the plaintiff tending to prove that he purchased the stock for delivery to him, and not the mere option to buy or sell it. But what the status of the case would have been had a full defense been made or had this question been fully investigated, cannot, of course, now be known.

Appellee, by cross-errors assigned, attempts to question the amount of damages allowed him by the trial court. He insists that the court adopted a wrong theory in the assessment of damages,—that is, allowed him the value of the stock at the time he demanded it, instead of its higher value when it was fraudulently sold and converted. Counsel have not pointed out, and we have been unable to find from the record, how this question, as one of law, is presented to this court. The trial court was not asked to hold any proposition as law in the case respecting it. It does not appear from remarks of the court embodied in the bill of exceptions that the court expressed his views on the proper measure of damages, but nothing appears to show that he carried these views into his findings or judgment.

Finding no material error, the judgment must be affirmed.

Judgment affirmed.

633 In the Supreme Court of the United States and in the Supreme Court of the State of Illinois.

RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Appellants in the Supreme Court of Illinois and Plaintiffs in Error in the Supreme Court of the United States,

vs.

JOHN E. BURKE, Appellee in the Supreme Court of Illinois and Defendant in Error in the Supreme Court of the United States.

Now comes the said Richard C. Crawford and Edward A. Valentine, appellants in the supreme court of Illinois and plaintiffs in error in the Supreme Court of the United States and present their petition for writ of error, assignment of errors and bond on writ of error in the sum of fifteen thousand dollars ($15,000.) which bond is approved and said writ of error allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein.

March 2, 1903.

BENJAMIN D. MAGRUDER,
Chief Justice of Supreme Court of Illinois.

634 And afterwards, to-wit: on the day and date last aforesaid there was filed in the office of the clerk of said court a certain bond, which said bond is in the words and figures following, viz:

STATE OF ILLINOIS:

In the Supreme Court.

RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Appellants in the Supreme Court of Illinois, Plaintiffs in Error in the Supreme Court of the United States,

vs.

JOHN E. BURKE, Appellee in the Supreme Court of Illinois, Defendant in Error in the Supreme Court of the United States.

Know all men by these presents, that we, Richard C. Crawford and Edward A. Valentine, both of the city of Chicago, county of Cook and State of Illinois, as principals, and Sarah L. Crawford, and Edward H. Valentine, of said city, county and State, as sureties, are held and firmly bound unto the above named John E. Burke, in the sum of fifteen thousand ($15,000) dollars, to be paid to the said John E. Burke, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 2nd day of March, 1903.

Whereas, lately in the circuit court of said county of Cook and State of Illinois, in a suit pending in said court, between the said John E. Burke, plaintiff, and the said Richard C. Crawford and Edward A. Valentine, defendants, a judgment was rendered against the said Richard C. Crawford and Edward A. Valentine on the fourteenth (14th) day of February, 1901, in the sum of nine thousand six hundred ninety 20/100 ($9,690.20) dollars, together with the said plaintiff's costs and charges, and

Whereas, the said Richard C. Crawford and Edward A. Valentine prayed for and obtained an appeal to the appellate court within and for the first district of said State, and

635 Whereas, the said appellate court did on the second (2nd) day of July, 1902, affirm the judgment of the circuit court aforesaid, and did render judgment against the above bounden for costs of suit from which order of affirmance and judgment of the said appellate court the said Richard C. Crawford and Edward A. Valentine prayed for and obtained an appeal to the supreme court of the State of Illinois, and

Whereas, the said supreme court of the State of Illinois did on the eighteenth (18th) day of February, 1903, affirm the judgment of the circuit and appellate courts with costs of suit, and the said Richard C. Crawford and Edward A. Valentine, having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of the State of Illinois to reverse the judgment rendered therein, as aforesaid, and a citation directed to the said John E. Burke, citing and admonishing him to be and appear at a Supreme Court of the United States of America, in the city of Washington and District of Columbia;

Now therefore, the condition of this obligation is such that if the above named, Richard C. Crawford and Edward A. Valentine shall prosecute their writ of error to effect and answer all damages and costs, if they shall fail to make their plea good, then this obligation to be void; else to remain in full force and virtue.

RICHARD C. CRAWFORD. [SEAL.]
SARAH L. CRAWFORD. [SEAL.]
EDWARD A. VALENTINE. [SEAL.]
EDWARD H. VALENTINE. [SEAL.]

Signed, sealed and delivered in presence of
CHAS. E. VORMAN.
EDWARD O. BROWN.

Approved March 2nd 1903.
BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of the State of Illinois.

Approved to operate as a supersedeas March 2nd 1903.
BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of the State of Illinois.

636 In the Supreme Court of the United States and in the Supreme Court of the State of Illinois.

RICHARD C. CRAWFORD and EDWARD A. Valentine, Appellants, vs. JOHN E. BURKE, Appellee. } No. 2689 in the Supreme Court of Illinois.

Assignment of Errors.

On this 2d day of March A. D. 1903, came the plaintiffs in error in the Supreme Court of the United States, Richard C. Crawford and Edward A. Valentine, being the appellants in the supreme court of Illinois and the defendants in the circuit court of Cook county, Illinois in an action brought by John E. Burke as plaintiff against them as defendants by their attorneys, Edward O. Brown and Charles E. Vroman and say that in the records and proceedings in said cause in the supreme court of Illinois there is manifest error in this, to-wit:

1st. The said supreme court of Illinois erred in affirming the said judgment in said cause of the appellate court of the first district of Illinois which affirmed the judgment in said cause in favor of the plaintiff rendered by the circuit court of Cook county.

637 *2nd.* The supreme court of Illinois erred in not reversing the judgment of the appellate court of the first district of Illinois which affirmed the judgment of the circuit court of Cook county in favor of John E. Burke against the said Crawford and Valentine in the aforesaid cause.

3rd. The said supreme court of Illinois erred in rendering a judgment for costs in the said supreme court in favor of the said John E. Burke as against the said Richard C. Crawford and Edward A. Valentine the appellants in said cause.

4th. The said supreme court of Illinois erred in not rendering a judgment for costs against the said John E. Burke in the said cause and in favor of the said Richard C. Crawford and Edward A. Valentine, appellants in said cause.

5th. The said supreme court of Illinois erred in not holding that the discharge in bankruptcy proven by the said Crawford and Valentine, plaintiffs in error, in said cause to have been granted to them during the pendency of said cause was a bar to the said action of the said John E. Burke against them.

6th. The said supreme court of Illinois erred in not holding that the discharge in bankruptcy proven by the plaintiffs in error, the said Richard C. Crawford and Edward A. Valentine, in said cause to have been granted to them during the pendency of said cause was a legal defense to said action.

638 *7th.* The said supreme court of Illinois erred in not holding that the twenty-one several assignments of error signed by the appellants as error in the proceedings of the appellate court of the first district which were well assigned, and therefore erred in not reversing said judgment of John E. Burke against the said Richard C. Crawford and Edward A. Valentine, or in not reversing said judgment and remanding said cause to the circuit court of Cook county.

8th. The said supreme court of Illinois erred in not holding that in said cause certain propositions of law submitted by said John E. Burke, being the plaintiff, in the circuit court of Cook county and the plaintiff in the appellate court of the first district and in the supreme court of Illinois, and each of them to the circuit court of Cook county and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, should not have been held by the circuit court of Cook county, and therefore erred in affirming the judgments of the appellate court of the first district of Illinois and of the circuit court of Cook county in said cause.

9th. The said supreme court of Illinois erred in not holding that the said circuit court of Cook county erred in not refusing to hold as a matter of law certain propositions of law and each of them submitted by the defendants in said circuit court, the appellants in the supreme court of Illinois, Richard C. Crawford and Edward A. Valentine in said cause to said circuit court, viz: the propo-

639 sitions submitted to the said circuit court of Cook county by said defendants in said court, the appellants in the supreme court of Illinois and the plaintiffs in error in the Supreme Court of

the United States, numbered 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13 and the said supreme court of Illinois erred therefore in affirming the judgment of the appellate court of the first district of Illinois and the circuit court of Cook county, Illinois in said cause.

10th. The said supreme court of Illinois erred in not holding that the said circuit court of Cook county erred in finding the issues in said cause for the plaintiff, and therefore the said supreme court erred in affirming the said judgment of the said circuit court and of the appellate court of the first district of Illinois in the affirmance of said judgment of said circuit court.

11th. The said supreme court of Illinois erred in not holding that the circuit court of Cook county erred in not finding the issues in said cause for the defendants and therefore the said supreme court of Illinois erred in affirming the said judgment of the said circuit court of Cook county and of the appellate court of the first district of Illinois.

12th. The said supreme court of Illinois erred in not holding that the circuit court of Cook county erred in refusing to admit proper and competent evidence offered by the said defendants in said circuit court, the appellants in the supreme court of Illinois and the plaintiffs in error in the Supreme Court of the United States, and therefore the said supreme court erred in affirming the judg-
640 ment of said circuit court of Cook county and of the appellate court of the first district of Illinois.

13th. The said supreme court of Illinois erred in not holding that the circuit court of Cook county erred in refusing to set aside its findings upon motion of the defendants in said circuit court and therefore the said supreme court of Illinois erred in affirming the said judgment of the circuit court of Cook county and the judgment of the appellate court of the first district of Illinois in affirming the same.

14th. The said supreme court of Illinois erred in not holding that the circuit court of Cook county erred in refusing to grant a new trial of the said cause upon the motion of the defendants in said circuit court and therefore the said supreme court of Illinois erred in affirming the said judgment of the said circuit court of Cook county and the appellate court of the first district of Illinois in affirmance of the same.

15th. The said supreme court of Illinois erred in not holding that the findings and judgment in said circuit court of Cook county in said cause were against the law and the evidence and therefore the said supreme court erred in affirming the said judgments of the circuit court of Cook county and the said appellate court of the first district of Illinois in affirmance of the same.

16th. The said supreme court of Illinois erred in not holding that no recovery on the facts proven could be had by the plain-
641 tiff in the circuit court in this form of action and therefore the said supreme court of Illinois erred in affirming the said judgment of the circuit court of Cook county and the said appellate court of the first district of Illinois in affirmance of the same.

17th. The said supreme court of Illinois erred in not holding that the contracts and dealings between the parties hereto, out of which arose the demand of said John E. Burke against the said Richard C. Crawford and Edward A. Valentine, asserted herein, were gambling contracts and transactions in violation of law and public policy, and hence that such demand is not recoverable.

Wherefore the plaintiffs in error, the said Richard C. Crawford and Edward A. Valentine, pray that the said judgment of the supreme court of Illinois and of the judgment in said cause of the circuit court of Cook county and of the appellate court of the first district of Illinois may be reversed and in all things set aside.

EDWARD O. BROWN,
Of Peckham, Brown & Packard,
CHARLES E. VROMAN,
Of Musgrave, Vroman & Lee,
Attorneys & of Counsel for Plaintiffs in Error.

642 UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States.

RICHARD C. CRAWFORD and EDWARD A. VALENTINE, Plaintiffs in Error,
vs.
JOHN E. BURKE, Defendant in Error.

Writ of error to the supreme court of Illinois.

And now come the plaintiffs in error by Edward O. Brown, their attorney and counsel and under section nine, rule ten of the Supreme Court, declare that they rely upon the assignment of errors filed with the transcript of record in said above entitled cause, and for printing designate the following parts of the record:

The whole record from the beginning up to and including page 470; also pages 546, 547 and 548; also, pages 568 to the end of the record;

To express the matter differently, I would say that plaintiffs in error would desire the whole record as filed printed EXCEPT pages 471 to 545 inclusive and pages 549 to 567 inclusive.

These excepted pages are transcripts of ledger accounts in the books of Crawford & Valentine, called,

Account of R. C. Crawford;
Account of R. C. Crawford No. 2;
Account of R. C. Crawford No. 3;
643 R. C. Crawford New York account;
Account E. A. Valentine;
Account E. A. Valentine No. 2;
Stock & bonds account;
Stanley & Crawford account;

Stanley & Valentine account;
P. E. Stanley account;
J. T. Kilgour account;
Crawford & Valentine grain account;
J. R. Wilkins account;
Wilkins, Hodson & Co. pool account;
I. Hodson, Jr. account;
I. Hodson, Jr. No. 2 account;
I. Hodson, Jr. No. 3 account;
I. Hodson, Jr. special account;
Hodson & Salisbury account;
Baldwin & Farlin account;
Dick Bros. & Co. No. 2 account;
Bills payable account;

and also transcripts of cash book accounts of Crawford & Valentine, called,

Capital, assets & liabilities account;
Assets and liabilities of Valentine & McAvoy;

and transcripts ledger accounts,

Dick Bros. & Lawrence,
Dick Bros. & Rae.

All the rest of the record the plaintiffs in error designate for printing.

The plaintiffs in error have served a copy of this statement and designation upon John E. Burke, defendant in error, and file proof of service upon him herewith.

EDWARD O. BROWN,
Attorney and Counsel for Plaintiffs in Error.

644 I hereby acknowledge the receipt of a copy of the within statement and designation from Edward O. Brown, solicitor and counsel for the plaintiffs in error in the above entitled cause, upon the 21st day of April, A. D. 1903.

JOHN E. BURKE.

645 [Endorsed:] File No. 18,878. Supreme Court U. S. October term, 1902 Term No. 650. Richard C. Crawford *et al.* P. E. vs. John E. Burke. Statement of errors & designation by pl'ffs in error of parts of record to be printed. Filed April 25", 1903

Endorsed on cover: File No. 18,878. Illinois supreme court. Term No. 247. Richard C. Crawford and Edward A. Valentine, plaintiffs in error, vs. John E. Burke. Filed March 26th, 1903.